UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

NEW ALBANY DIVISION
UNITED STATES OF AMERICA)
Plaintiff,)
v.)NO. NA 94-88-C-D/H
AREL B. HAWKINS, et al.,)
Defendants.)

ENTRY ON PROCEEDINGS FOR APRIL 29, 1996

This matter came before the Court on April 29, 1996, on the Court's Order to Show Cause why Arel B. Hawkins and Eva J. Hawkins should not be held in contempt of the Court for their failure to vacate real property and surrender personal property as ordered by the Court on March 28, 1996, in its Writ of Ejectment. Present at the hearing were Arel B. Hawkins and Eva J. Hawkins. The Judgment creditor, the United States of America, was present by counsel.

During this hearing, the Court heard witness testimony and received documentary evidence which established that Arel B. Hawkins and Eva J. Hawkins were still residing on the real property ordered to be vacated, and possessing the personal property ordered to be surrendered to the Farm Service Agency in violation of the Court's Writ of Ejectment. Accordingly, the Court found Arel B. Hawkins in civil contempt in violation of 18 U.S.C. Section 401(3).

At the hearing, however, the Court withheld the imposition of a penalty and afforded Arel B. Hawkins the opportunity to purge himself of civil contempt by vacating the property forthwith and allowing him until the end of the week to do so.

IT IS SO ORDERED.
Dated: April 29, 1996
S/ S. HUGH DILLLIN
S. HIGH DILLIN, Judge
United States District Court
Southern District of Indiana

Copies to:

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APPENDIX D
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
UNITED STATES OF AMERICA,)
)CIVIL CAUSE NO.
Plaintiff,)NA 94-88-C
-v-)9:40 a.m.
)Indianapolis, Indiana
AREL B. HAWKINS, et al.,)April 29, 1996
Defendants.)
Before the
HONORABLE S. HUGH DILLIN
Official Reporter's Transcript
of
SHOW CAUSE HEARING
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(Call to Order of the Court)

THE COURT: All right, the matter we have this morning is United States versus Hawkins. Ms. Massey, are you ready to proceed?

MS. MASSEY: I am, your Honor. Would the Court like a brief opening statement?

THE COURT: Well, whatever suits you.

MS. MASSEY: Just for the Court's information by way of background, this case came to the Court on the United States' application for foreclosure and the Court granted a judgment decree of foreclosure in August of 1995.

The marshals sale was held pursuant to the Court's order in December 1995, and after the sale was completed a letter was mailed to the defendants, Mr.

Arel Hawkins and Ms. Eva Hawkins, in January, requesting that they vacate the property no later than February 28th, 1996.

The Hawkinses failed to remove their belongings or to move from the property, and so the marshals then held a meeting with the Hawkinses on February 29, 1996. At that meeting the Hawkinses began to advise the marshals that they did not intend to move from the property, and that prompted the United States to file its application to the Court to have writs of ejectment and a writ of assistance issued. Those writs were issued and subsequently served on Eva Hawkins on March 30th, 1996, on Arel Hawkins also on March 30th, 1996, and on another person believed to have been living on the property at the time, Perry Hawkins, on April 3rd, 1996. After those orders had been issued and received by the defendant, the United States confirmed that the defendants were still residing on the property, which prompted it to apply to this court for order to show cause and that is why we are here today.

THE COURT: All right, thank you.

Do you have a statement, Mr. Hawkins?

MR HAWKINS: Yeah, I have got a lot to say, your Honor.

Do I need to go up there? Do I sit here or what?

THE COURT: Well, the people addressing court usually stand. You don't have to stand behind that, however.

MR. HAWKINS: Okay.

I am representing myself here I guess, and so I am going to have to try to stumble through this.

THE COURT: Okay.

MR HAWKINS: The first question I guess I will have to ask you is Mr. Bill Jenkins and Mr. John Kemple and Mr. Bill Jenkins' representatives, are they going to be witnesses here?

THE COURT: I have no idea.

MR. HAWKINS: Well, if they are not witnesses, I think I'd rather not them be in the room.

THE COURT: I don't even know who these people are.

MR. HAWKINS: Well, right there, the front row to your right.

THE COURT: Well, this is a courtroom and the courts are open to the public. And, therefore, anybody that wants to come in and observe this hearing is free to do so.

MR HAWKINS: Well, I was questioned pretty hard about my two friends being here. And if they was witnesses they'd have to be in another room, and if they are not witnesses they can be here. So if these gentlemen here are going to be on the witness stand should they be in here?

THE COURT: Well, I don't know whether they are going to be witnesses or not, but I will ask counsel, are they?

MS. MASSEY: Judge, we anticipate having three witnesses today: United States deputy marshal, Brian Aldridge, Willliam Jenkins, the purchaser of the property at the marshals sale, and Jerry Gettelfinger, who is the Farm Service agent in the county office in Paoli, Indiana.

THE COURT: Thank you.

MR HAWKINS: So they are going to be allowed to stay in the room?

THE COURT: Yes.
MR. HAWKINS: Okay.
Is Judith Stewart here?
THE COURT: Well, once again, I am not a witness and I am not on anybody's side. I am just the judge and--
MR HAWKINS: Well--
THE COURT: Let me tell you how these things are conducted. In the first place, the party who starts the proceeding, which is the government, gets to make an opening statement in which, in this case, she says what she is going to prove. Then the defendant, which is you, gets to say what you are going to prove, if anything. And then we go back to the government and they get to call witnesses, and we go back to you and you get to call witnesses.
MR HAWKINS: Okay. I mean, that is all right. I am not trying to be hard, I am just--
THE COURT: Yes, I understand.
MR. HAWKINS: Meanwhile, I guess this is Mrs. Marsha--I will find her name here in a minute--she is the assistant U.S. attorney. Are you contracting work for the United States Justice Department, or are you hired to be here for the justice department?
THE COURT: Once again, Mr. Hawkins, if you have a statement that you want to make you may make it. But you can't question.
MR HAWKINS: Can I question you then?
THE COURT: No.
MR. HAWKINS: Well, I have just got answers, I mean, no answers, I have just got questions that--
THE COURT: I am telling you what you may do. You may make a statement as to what your position

is.

MR HAWKINS: Okay.

THE COURT: In other words, if you have some reason, some legal reason to give the Court why you should not vacate this property, which has been sold to somebody else, then you may state what your reason is.

MR HAWKINS: I intend to, sir.

THE COURT: Okay.

MR. HAWKINS: She made the remark that I received a writ. Then she made the remark that I received something else besides the writ. Would that have been this, the order to show cause? Because the writ is the last thing I received outside of this subpoena. And my wife received the writ. I never did. And my brother received a copy too. And he signed for it. Perry Hawkins. I went to him last Wednesday after I received this subpoena and asked for this subpoena, and it said then, it said that he has vacated the property and had left. So I went and asked him. He said he was not. His mail is current that comes there, his phone bill is current, his electric bill is current, his clothes is there and he has got six head of livestock on the place. So he has not vacated the premises.

THE COURT: So all three of you are still there, right?

MR HAWKINS: Yeah.

THE COURT: Okay.

MR. HAWKINS: And then the writ, the copy of the writ that I got with the subpoena is different from the original writ that I got. The original writ had my mother's name on it. And the one that is in this

doesn't. My mother's name is Dorothy Hawkins. And my son's name is different in the writ too. The exhibit, Exhibit A for personal property, has got two pieces of equipment that was not on the summary judgment and was not in the foreclosure proceedings: That is 844 National Corn Head and the Idea cornpicker, two-row, they was not listed in the summary judgment that I received, and it was not listed in the suit, I have got 'em both here. And he goes through here, the Court says -- well, I hate to read to you. You guys read better than I can. Have you got a copy of this subpoena in front of you, sir?

THE COURT: I imagine. I signed it.

MR. HAWKINS: I mean, I just, you know, so we can walk along together on this. The Court set down ". . . .if there be any. . . why they should be held in contempt of this court for failure to vacate the real property and surrender the personal property as ordered by the Court. The only order that I received, to bring it up before we get to the writ, was January 30th I received from the federal marshal, Frank Anderson, he ordered me and my wife to leave by February 28th. It was not the Court. The federal marshal.

THE COURT: Well, of course, he works for the Court, you understand, don't you? I mean, the judge of the court doesn't do anything except make rulings or orders which other people employed by the Court, such as the marshal, such as the clerk, are charged with carrying out. The judge doesn't do anything except rule on questions of law. And make orders.

MR. HAWKINS: The Court has to make the order, doesn't it, sir?

THE COURT: Yes. But if the Court makes an order that you should vacate the property, he does that in writing and then he hands it to the marshal, the piece of paper that is, and the marshal goes down and reads it to you, hands it to you or, in other words, makes it known to you what you are supposed to do.

MR. HAWKINS: Yeah, the marshal is supposed to make sure I get what the Court says.

THE COURT: Right.

MR. HAWKINS: Okay.

I got the copy, I got what the marshal had mailed to me certified mail. And I examined it very hard. And there was no statute giving the marshal or the Court either one the jurisdiction to order us off the property. And I have asked for it.

I had a lawyer by the name of George Streckfest call the United States Attorney and she told him--well, he told me--I was in the same room when the phone conversation took place--that it is not up to the United States Justice Department to furnish the statute; I have to find out for myself. So, therefore, I never received the statute giving the federal court jurisdiction to order me or anybody else off of private property in a civil case.

And I have still not got the statute, your Honor. And I guess that is one of the bases of my defense here.

Then we come up to the writ.

I will get the original writ out here. Here it is. Okay, I guess I will just have to walk through you

with the writ. It starts out, "Whereas, the plaintiff, the United States of America, on behalf of the Farmers' Home Administration, its successors and assigns, the United States Department of Agriculture, foreclosed new interest in both real and personal property in a judgment against you in the above-entitled cause of action August 7th, 1995." The way I take that, the Court gave the judgment.

THE COURT: That is correct.

MR. HAWKINS: So it is a judgment. Okay. "Whereas, on December 8th, 1995 the United States Marshals Service conducted a sale and the real property was purchased by Hill Country Farms, Incorporated.

"On January 5th, 1996 this Court entitled its order concerning sale and deficiency judgment and a copy was duly mailed to you on or about the same date. A deficiency judgment--I guess that has to mean the difference between what the farm brought at sale and what is remaining on the debt.

THE COURT: That's correct.

MR HAWKINS: I want to know why there was a judgment filed at the recorder's office in Orange County about the middle of October--I have got the date somewhere--why the judgment was filed against me at the courthouse before the deficiency was known after the sale.

THE COURT: Well, Mr. Hawkins, at the time of the sale you and Mrs. Hawkins owed the Farmers Home Administration of the government of the United States of America, however you want to put it, the sum of $1,169,644.02. Now, if the property had sold for a million 169,000 and so forth, you

would have been even. But it didn't sell for that. It sold for $166,800. So you subtract 166,800 from the original debt and that leaves a deficiency of 1,002,844.02. And of course, until the sales price was known there couldn't be an exact deficiency. If you follow that.

MR HAWKINS: Yeah, I follow that.

THE COURT: And that was January the 5th, 1996. So you still owe the government a million dollars plus interest.

MR. HAWKINS: Yeah, after the sale.

THE COURT: After the sale.

MR. HAWKINS: Well, what puzzled me is I don't understand why they went to the effort of applying the lien at the recorder's office until after the sale.

THE COURT: Well, I don't know. I didn't do that. But there is such a thing--well, I don't know. I don't even know that they did.

MR. HAWKINS: Well, I can satisfy your mind with that if you want to see it.

THE COURT: Well, it doesn't really make any difference.

MR. HAWKINS: Okay, you don't want to see it then.

THE COURT: It doesn't make any difference because you did owe the money and you hadn't paid it.

MR. HAWKINS: I am not arguing that point, sir.

THE COURT: Okay. It is just like if you hocked your watch at the pawn shop; if you don't pay the money the pawnbroker keeps your watch. You hocked your farm and eventually the debt got to a million dollars. How that happened, frankly, in

Orange County, I don't know. But it did. And they finally sold it.

MR. HAWKINS: Yeah, I know they went through the motions.

I guess I am ready to go on then. We wore that part out.

THE COURT: Yes.

MR. HAWKINS: January the 5th, 1996, the Court entered its order confirming the sale. That was on January the 5th the Court confirmed the sale and the deficiency judgment.

THE COURT: Right.

MR. HAWKINS: "And a copy was duly mailed to you on about the same date. You are now roughly holding, possessing the following property, to-wit:" And it gives you description of personal property and legal description of the real property. "You and any other persons residing on real property are therefore commanded by the Court to vacate the real property." It didn't say ordered, it commanded. Then we go ahead with foreclosure on -- this is the two exhibits on the real property and the personal property. Foreclosure on this option surrendered the personal property foreclosed upon this in this action surrendered the personal property foreclosed upon in this action to Farmers Home Administration and remove all personal possessions located on the property within five days upon receipt of this writ. Should you fail to comply with this writ, the Court may--I underlined "may"--hold you in contempt of court. It did not say "will". This is my argument on any contempt of court charges.

If it had said "will" it would have made a lot of

difference there.

THE COURT: Well, the difference is if I had said "will" why, then you'd automatically be in contempt of court. When I say "may," that means that you are entitled to a hearing and that is what we are having this morning.

MR HAWKINS: Okay, good. Let's put the writ up for now. Now, we'll go to the order to show cause. Front page, subpoena in a criminal case. Someone asked me: Is this a criminal case, sir?

THE COURT: No, it is not.

MR. HAWKINS: Okay.

"The above-captioned matter came before the Court on the motion of the United States of America on an order requiring Arel B. Hawkins and Eva J. Hawkins to show cause, if any there may be." And I have already showed cause this is not a criminal case.

Okay. ". . . why they should not be held in contempt of this Court for failure to vacate the real property and to surrender personal property as ordered by the Court on March 28th, 1996, in this writ of ejectment why they should not be held in contempt of court.

Well, I guess you have answered that because that is up to you to determine whether any contempt of court had been made or not.

THE COURT: Correct.

MR. HAWKINS: Then it says "to surrender personal property as ordered by the Court on March 28th."

Sir, is a writ an order?

THE COURT: A writ is a--is a piece of paper that

tells you to do something. Yes, it is an order in that sense.

MR. HAWKINS: The best I could understand--I looked in dictionaries all over the place--and two or three dictionaries say a writ is short for a writing; that is what it says "writing." So that is slang. That is like a Kentuckian saying "I writ you a letter." And I do have one, Mr. George Streckfest (phonetic).

How would you pronounce it, ma'am?

THE REPORTER: Streckfest (phonetic).

THE COURT: Is that the lawyer you talked to?

MR. HAWKINS: No, no. Yeah, he is one of the lawyers I talked to. I have got a copy of the federal code on the duties of the United States marshal and how they are appointed by the president to advise what a writ is.

THE COURT: Well, a writ is an order to you to get off that property because it has been sold.

MR. HAWKINS: I understand it is a device. I mean, I have looked at it hard. You know, I mean, this is very important to me, sir.

This is Volume 28, page 561, Department of Justice. What Mr. George -- that last name--lawyer sent me. It says "Powers and Duties.

"Except as otherwise provided by law or rule of procedure, the United States Marshals Service shall execute all lawful writs, processes, and orders issued under the authority of the United States."

And it says. . . and shall, and I ran out of that page. But there is definitely a difference between a writ and an order.

THE COURT: So you think.

MR. HAWKINS: Well, I mean, I have got to be a majority within myself here, sir, and I looked and I looked and I looked and this is the best I come up with.

THE COURT: All right, thank you. I get your point. Thank you very much. You may sit down. You may call your first witness.

MS. MASSE: Judge, may I also verify for the Court something?

THE COURT: Yes.

MS. MASSE: We served Mr. Hawkins with a criminal subpoena in this matter, because in our application to the Court for order to show cause we requested both criminal and civil contempts be entered against Mr. Hawkins in this matter. And that is why he was served with a criminal subpoena.

THE COURT: You may go ahead and call your first witness.

MS. MASSE: Yes, Judge. At this time I'd like to call Brian Aldridge to the witness stand. Would you please state your name and spell your last name for the court reporter.

BRIAN ALDRIDGE, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

QUESTIONS BY MS. MASSE:

Q. Would you please state your name for the record and spell your last name for the court reporter.

A. Brian Aldridge, A-l-d-r-i-d-g-e.

Q. Mr. Aldridge, where do you work?

A. I am employed as a deputy United States marshal here in Southern Indiana, in the Indianapolis Division.

Q. How long have you been employed as a deputy United States marshal?

A. Since February 1985.

Q. And, Mr. Aldridge, in your duties as a deputy United States marshal, have you come to know the defendants in this matter, Mr. Arel and Ms. Eva Hawkins?

A. I have.

Q. Could you please describe to the Court how it is that you came to know these people.

A. Well, your Honor, I first met Mr. Hawkins at the sale of the property on December 8th, 1995. Ms. Eva Hawkins I met at a later time, which was probably in February or March of 1996.

Q. Mr. Aldridge, could you please tell the Court, were you the deputy United States marshal who was in charge of conducting the sale of the real property in this matter?

A. Yes, I did conduct the sale of that property.

Q. And to your knowledge, who purchased that property at the marshal's sale on December 8th, 1995?

A. The deed reads Hill Farms, Incorporated, or something of that nature, but behind that is Mr. and Mrs. Jenkins.

Q. Would Hill Country Farms be the correct name?

A. That's correct.

Q. After the marshals' sale was conducted by you in December of 1995, did your office have cause to mail a letter to Mr. and Mrs. Hawkins in January of 1996?

A. Yes, we did. On January--

MS. MASSEY: Your Honor, may I approach the

witness?

THE COURT: Yes. You don't have to ask permission.

MS. MASSEY: Deputy Aldridge, I am showing you what has been previously marked as Government's Exhibit One for identification. Can you identify this document, please?

A. Yes, I recognize that document.

Q. And can you identify it for the Court?

A. Your Honor, this document is a form letter mailed out on the United States Marshals Service, signed by the United States Marshal, Frank J. Anderson, advising Mr. Hawkins that he is to vacate the property by February 28th, 1995, which is approximately 30 days from the mailing.

THE COURT: When you say it is a form letter, it is a copy, I presume?

MS. MASSEY: Yes, Judge.

QUESTIONS BY MS. MASSEY:

Q. And also, appearing at the bottom of the copy of this form letter is what looks to be a return of service. Could you please describe that for the Court as well.

A. This document was mailed approximately January 30th. The return receipt was received by the United States Marshals Service signed by Arel B. Hawkins. However, the return receipt was not dated. So the return would have been sometime after January 30th, 1996.

MS. MASSEY: Your Honor, at this time I'd like to move Government's Exhibit One into evidence.

MR. HAWKINS: Yeah, that is like the one I received.

THE COURT: It will be received.
(Government Exhibit One admitted in evidence)
QUESTIONS BY MS. MASSEY:
Q. Now, Mr. Aldridge, to your knowledge, did the Hawkinses vacate the property as they were requested to do in that letter sent January 30th, 1996?
A. I contacted Mr. Hawkins by phone and asked him if he had vacated the property, and he advised me that he had not vacated it by February 28th, 1996.
Q. And did that cause you to set up a meeting with Mr. Hawkins which took place on February 29th, 1996?
A. That is correct.
Q. Could you please describe to the Court Mr. Hawkins' position on vacating the property and turning over the personal property?
A. Mr. Hawkins agreed to meet at a local restaurant, The Ritz Restaurant, in Paoli, Indiana. Myself and my supervisor, Richard Burton, went there and met him. Mr. Hawkins arrived. Mrs. Hawkins was not there. The two gentlemen with Mr. Hawkins today were at the meeting.
We had about a hour's meeting. The meeting kinda rambled. Mr. Hawkins advised that there was no reason for him to leave because the government has not shown any authority to have him leave that land. The meeting basically concluded that he was going to stay on the property until such time that the Court actually ordered him off and he believes that that had not been done.
MR. HAWKINS: Your Honor--

THE COURT: You can testify after while, if you want to.

MR. HAWKINS: Okay.

QUESTIONS BY MS. MASSEY:

Q. Mr. Aldridge, to your knowledge, did your office then send by certified mail copies of a writ of ejectment to Mr. Arel Hawkins and Ms. Eva Hawkins and Mr. Perry Hawkins?

A. Yes, we did. Approximately 30 days after that meeting, approximately March 29, 1996, our office sent certified letters to Mr. Arel Hawkins, Mr. Perry Hawkins and Mrs. Eva Hawkins.

The order stated that they had five days upon receipt to vacate the property.

Certified receipts came back. Mr. and Mrs. Arel Hawkins, the return receipt was dated 3-30-96. And Perry Hawkins' receipt was dated 4-3 of '96.

Q. Now, since the time those writs of ejectment were received by the Hawkinses, have you had an occasion to contact Mr. Hawkins again?

A. I have. I attempted to contact Mr. Hawkins by telephone. I was unable to do so. And on April 24th, 1996, I drove to Paoli. I seen Mr. Hawkins in town and I asked him if we could speak down the street, which he agreed to.

Q. Deputy Aldridge, I am showing you what has been previously marked as Government's Exhibit Two for identification. Do you recognize this document?

A. That document is a U.S.M. 285 that the Marshals Service returns their service on, of court orders.. This is -- the process that was served by this document is a subpoena, a memo, an

application and an order. My signature is on this document.

Q. Mr. Aldridge, I note some handwriting down at the bottom. Could you please tell the Court whose handwriting that is on the bottom of this process receipt and return?

A. There is handwriting of two people on there: Deputy United States Marshal, Jim Truitt, filled out the service fee and the mileage that is charged to serve process. I signed that document that the time and date that it was served is accurate and I made notes on here reference the manner of service on that date.

Q. And would you please read for the Court your notes that you included on that return of service.

A. My notes showing that how I executed this process was that on April 24th, 1996, upon seeing Hawkins departing from a Paoli gas station, I invited him to pull down the block to talk. Hawkins was receptive to service. He stated he understood he was to be in federal court on 4-29-1996. Mr. Hawkins indicated he would be present.

Mr. Hawkins advised that he was still residing on the property with his wife and children.

Q. I am now showing you what has been previously marked as Government Exhibit Number Three for identification. Can you identify that document for the court as well?

A. It is also a 285 for process, receipt and return of service, which I served on Mrs. Hawkins that same date. I have signed it and also made notes of how I served Mrs. Hawkins.

Q. And would you please read for the Court your

note on the bottom of that return, sir.

A. "On 4-24-96, I served Mrs. Hawkins at her employment Paoli, Inc. Company, Industrial Park, Orleans, Indiana, phone number 812 865 1525.

"Mrs. Hawkins stated she understood she was to appear in federal count on 4-29-1996."

MS. MASSEY: Your Honor, the United States now moves that Government's Exhibits Two and Three be admitted into evidence.

MR HAWKINS: How come it doesn't show at the bottom of this sheet? I don't understand why this is the same words I used at the bottom and it is not the same.

I wouldn't have none of this, would I?

This is your work ledger? or what?

THE COURT: You may answer the question.

THE WITNESS: You do not have a copy of that 285, which is a receipt in return of service stating that all of the documents were given to you on that date. You do not have a copy of that 285.

MR. HAWKINS: Are these both 285s?

THE WITNESS: That is correct.

MR. HAWKINS: Okay, I don't have it then.

THE COURT: All right, Government Exhibits Two and Three will each be received.

(Government's Exhibits 2 and 3 admitted in evidence)

MS. MASSEY: Judge, I don't have any additional questions of this witness.

THE COURT: Okay.

If you have any questions you may ask him.

MR. HAWKINS: Yeah, I'd like to make a statement and ask a question to you.

THE COURT: You can't make a statement. Just ask a question.

MR. HAWKINS: Okay, thank you.

CROSS-EXAMINATION

QUESTIONS BY MR. HAWKINS:

Q. Pardon me. I remember faces, I don't remember names.

A. Aldridge.

Q. Mr. Aldridge, back to that meeting on February 29th, what was the reason I said to you why I wouldn't leave?

A. My recollection is that you would not leave that property because legally you had been given no reason to justify your leaving. And basically, you stated that is an order from the judge.

MR. HAWKINS: I don't know how to go any farther with this. I mean, I remember what I said but you said I can't make no statements so I don't know what else--

THE COURT: Well, when it is your turn to present your side of the case you may sit in that same chair and testify.

MR. HAWKINS: Okay. All right. Thank you, then.

THE COURT: That is all, Mr. Aldridge.

MR. HAWKINS: Oh, wait a minute.

THE COURT: Okay, go ahead.

MR. HAWKINS: Sorry.

At that meeting I had three witnesses. Two of these gentlemen are here: Mr. Delbert Murphy and Mr. Richard Langford. And there is another gentlemen that was a witness the first time we met in the Orange County Complex Building, and his name

was Mr. Archie Smith.

At the meeting at The Ritz on the morning of the 29th, did you or did you not have a tape recorder at the meeting?

A. I did.

Q. And did it work? Did it take the tape?

A. It functioned.

Q. Do you have a copy of it? Can we get a copy of it?

A. I can make a copy of it. When I say that, it will be difficult but I can do that.

Q. Then I am requesting it then, sir, at your soon-as-possible time.

Okay, that is all.

THE COURT: Okay, that is all, Mr. Aldridge.

WITNESS ALDRIDGE EXCUSED

MS. MASSEY: Judge, at this time the United States would like to call Mr. Jerry Gettelfinger to the stand.

THE COURT: All right, Mr. Gettelfinger.

JERRY GETTELFINGER, GOVERNMENT WITNESS, SWORN

DIRECT EXAMINATION

QUESTIONS BY MS. MASSEY:

Q. Mr. Gettelfinger would you please state your name for the Court and spell your last name for the court reporter.

A. Yes, I am Jerry Gettelfinger, G-e-t-t-e-l-f-i-n-g-e-r.

Q. Mr. Gettelfinger, where do you work?

A. I work at the Farm Service Agency office located in Corydon, Indiana.

Q. What is your position with the Farm Service

Agency?

A. I am the credit manager for Farm Service Agency.

Q. As the credit manager for Farm Service Agency, have you had the opportunity to become familiar with the foreclosure matter of Arel and Eva Hawkins?

A. Yes, I have.

Q. Mr. Gettelfinger, are you familiar with the personal property that is subject to the United States' mortgage that was foreclosed upon in this matter?

A. Yes, I am.

Q. Would you please tell the Court whether the Farm Service Agency has received its equipment from the Hawkinses.

A. No, it has not.

Q. Would you please tell the Court whether you received any contact from the Hawkinses in order to set up a time at which they can turn over the property?

A. I have not had any contact.

Q. And to your knowledge, Mr. Gettelfinger, do the Hawkinses still reside on the property?

A. To my knowledge, yes, I believe they still do.

Q. Mr. Gettelfinger, on April 11th, 1996, did you have an occasion in which you drove by the Hawkins farm?

A. Yes, I did.

Q. Could you please describe for the Court the condition of the farm at that time as to whether the Hawkinses were still residing there?

A. From what I could see, there was a vehicle

parked in the driveway, wood stacked outside the mobile home. I did not see an individual standing outside the mobile home or anything like that, but it led me to believe that someone was still residing there.

MS. MASSEY: I don't have any further questions.

MR. HAWKINS: Can I--

THE COURT: You may ask questions.

MR. HAWKINS: Okay.

CROSS-EXAMINATION

QUESTIONS BY MR. HAWKINS:

Q. Mr. Gettelfinger, am I saying it right?

A. Yes.

Q. Are you related to the Gettelfingers from Palmyra?

MS. MASSEY: Objection. I don't think that is very relevant here, Judge.

MR. HAWKINS: Well, okay, I will withdraw it.

THE COURT: Go ahead.

QUESTIONS BY MR. HAWKINS:

Q. How long have you worked for Federal Farm Service?

A. Since 1986.

Q. How many years have you worked out of the Corydon office?

A. December 1988 is whenever I took over the Corydon office.

Q. When did Corydon, the office at Corydon start handling the cases out of Orange County?

A. During the USDA reorganization which took place--the files were transferred during the summer of 1995.

Q. Summer of 1995?

A. Yes, sir.
Q. Would you please explain to me why FMHA had a reorganization.
MS. MASSEY: Objection. Relevance.
THE COURT: I will sustain the objection. It has nothing to do with this case.
MR HAWKINS: Your Honor, can I approach the bench?
THE COURT: I can hear you.
MR. HAWKINS: Okay.
To me it means a lot to this case. Because, let me just explain why: Janet Reno dissolved FMHA.
THE COURT: Are you contending that you don't owe the million dollars?
MR. HAWKINS: No, I ain't saying that.
THE COURT: Well then, it doesn't make any difference why they moved from here to there.
MR. HAWKINS: If you let me try, what my opinion is--I will explain it to you and then you can-
-
THE COURT: Go ahead.
MR. HAWKINS: Okay. My opinion is--what year did you say they reorganized?
THE WITNESS: Last year.
Q. 1995
Now, I listen to news and I rea- ome, slow as I am I can't read too much, but Janet Reno reorganized FMHA because it was not a legal loaning institution to start with.
THE COURT: I don't believe Janet Reno did, because she is the attorney general and FMA is a department of agriculture, if I am not mistaken.
MR. HAWKINS: Yeah, but the department of

agriculture with FMHA has been using the United States Justice Department as a bill collection.
THE COURT: Well, of course they have. Because that is the only people that are entitled to do it.
MR. HAWKINS: What I am trying to get at, sir, is FMHA never had no authority to collect. They was loaning out money. United States dollars, without no authority to collect it. And that is one of the reasons they dissolved FMHA.
THE COURT: Do you know what a mortgage is?
MR. HAWKINS: Yes, sir
THE COURT: What is it?
MR. HAWKINS: It's like putting a lien against your automobile, I guess.
THE COURT: That is right.
Did you and your wife give a mortgage on this property?
MR. HAWKINS: I guess we signed one, yes, sir.
THE COURT: And did you pay it?
MR. HAWKINS: No, sir.
THE COURT: Then the government is entitled to foreclose the mortgage. And they did.
MR. HAWKINS: Well, the reason--
THE COURT: They did, Mr. Hawkins. Now, don't argue with me. They did. And they sold the property. And that is why you are supposed to get off of it. And you had better do it.
MR. HAWKINS: Can I go on?
THE COURT: No.
MR. HAWKINS: I can't ask questions?
THE COURT: Well, you can ask questions on what he said. He said you were still there. If you are not still there you can go into that.

MR. HAWKINS: How far back in time can I go with this gentleman?

THE COURT: I don't know. I'd have to hear the question.

QUESTIONS BY MR. HAWKINS:

Q. Do you know anything about this case back to 1983?

A. Somewhat. Not a whole lot.

Q. In the spring of 1983, why did FMHA ask me to leave the farm and leave all of my personal effects and everything and walk down the road?

MS. MASSEY: Judge, I am going to object to relevance. A valid judgment and decree of foreclosure has been entered in this matter. What transpired prior to that is not relevant to this court's proceeding here today as to whether they are in contempt.

THE COURT: That is very true. However, I will let him answer the question if he knows the answer.

A. I wasn't working for Farm Service Agency in 1983.

Q. Okay, that is the answer?

A. From what I could see in the files and which I recollect, I have no idea.

Q. Do you know what kind of loan FMHA had with me?

A. Farm ownership, I believe, which was secured by real estate and chattels. There may have been other loans also.

Q. Do you know the time span on the mortgage loans and the chattel loans paid by schedule, the time schedule on them loans?

A. The farm ownership can be up to 40 years. The

chattel loan is initially set up for seven years, sir.

Q. Why is the chattel loan for seven years?

A. Typically, that is just what they are set up for. The regulations allow the loans to be set up to seven years.

Q. I am talking about legally, not typically. Legally, why are they set up for seven years?

A. The law allows it. I guess I don't understand the question.

Q. Why is the chattel loans set up no longer than seven years?

A. Typically the life of the chattel, I suppose. As opposed to real estate which can be here indefinitely, chattels tend to depreciate over time.

Q. And again I am not asking typically. I am talking about logistically, legally. That is what I am going for. Why do they stop it at seven years legally on a chattel loan?

A. Well, the chattel loan, it comes due for however many years you set it up for. It can be set up for seven years. It doesn't have to be set up for seven years.

Q. But is seven years the limit?

A. It depends, determines on the terms of your note.

Q. That is all you know about that?

A. If you set it up for seven years it comes due, installments are paid every year, and then after the seventh year you can make your payments and it doesn't exist anymore; you pay it off.

Q. Now, are you familiar with EE loans?

A. Economic emergency loans, yes.

Q. Do you know whether I have one of them or not?

A. I can't say offhand without looking at the file. But economic emergency loans can also be secured by chattels and real estate.

Q. Can a crop loan fall under the EE loan?

A. I don't know.

Q. Can FMHA--can they legally take deficiency on a crop loan that wasn't paid back and attach it to a mortgage?

MS. MASSEY: Judge, I am going to object on relevance. Mr. Hawkins is basing this on legal conclusions

THE COURT: Sustain the objection. None of this is relevant, Mr. Hawkins.

Mr. Hawkins, you were sued to foreclose the mortgage sometime back in 1994. If you had a defense to that, if it was improper for the government to foreclose the mortgage, either on your real estate or on the personal property, you had a right to come into court and give those reasons. You did not do that. You did not appear at all. You didn't hire an attorney. You didn't appear in person. Therefore, you were defaulted, meaning that since you had not made an appearance in the case you were admitting that everything said in the complaint was true. That is what a default amounts to.

So you admitted, by failing to appear, that you had not paid the taxes on the property, that you had not paid the installments due on the personal property, that you had not paid the installments due on the mortgage, and that you owed the government in excess of a million dollars. On a farm that isn't worth anything close to that.

So judgment was taken against you, as it would be

taken against any other person in the world who was in the same situation. Now then, you are refusing to abide by the order of the Court and the decree of foreclosure. Which, unless adequately explained, puts you in contempt of court, for which you may be fined and imprisoned.

That is where we are this morning.

Now, you are asking questions about, I suppose, the legitimacy of these mortgages that you signed. That is behind us because by failing to appear when you were sued you have admitted all of that.

So please sit down.

MR. HAWKINS: Can I talk to you?

THE COURT: Not right now.

MR. HAWKINS: Okay.

MS. MASSEY: Judge, we have no further questions of Mr. Gettelfinger.

THE COURT: Okay, that is all, Mr. Gettelfinger.

(WITNESS GETTELFINGER EXCUSED)

MS. MASSEY: Judge, as our last witness, we'd like to call Mr. William Jenkins to the stand.

WILLIAM H. JENKINS, GOVERNMENT WITNESS, SWORN

DIRECT EXAMINATION

QUESTIONS BY MS. MASSEY:

Q. Good morning, Mr. Jenkins.

A. Good morning.

Q. Would you please state your name for the record and spell your last name for the court reporter.

A. William H. Jenkins. Spelling is J-e-n-k-i-n-s.

Q. Mr. Jenkins, do you own a corporation known as Hill Country Farms, Incorporated?

A. I do.

Q. Were you the purchaser of the property that was foreclosed upon and sold at a marshals' sale in December 1995?

A. That is correct, I am.

Q. And who prior to the time you purchased the property were the owners?

A. To my understanding, Arel B. Hawkins.

Q. Mr. Jenkins, as purchaser of the property since the time you bought it in December, have you had access to the property?

A. I have not.

Q. And why is that?

A. Arel B. and Eva Hawkins live on the property and they have possession and I do not.

MS. MASSEY: May I have a moment to confer, Judge?

THE COURT: Yes.

MS. MASSEY: No further questions of this witness at this time, Judge.

MR. HAWKINS: Your Honor, can I ask Mr. Jenkins a question?

THE COURT: Yes, if it is material.

MR. HAWKINS: Okay.

CROSS-EXAMINATION

QUESTIONS BY MR. HAWKINS:

Q. Mr. Jenkins, how many parties are there involved in the purchase of this property?

A. I put up the initial money. There are two other people that are interested in the property. That would be three people that are interested.

Q. These other parties never put up no money then?

A. I put up the initial money. One of the other parties has put up money, down to this point.

Q. Name both other parties if you would, sir.
A. John Kemple and Rob Andis. I think that is A-n-d-i-s or t-i-s, one or the other.
Q. Mr. Jenkins, the day of the auction, did you insure my farm?
A. The day of the auction, I did not.
Q. When did you insure the farm?
MS. MASSEY: Objection as to relevance.
THE COURT: Yes. I will sustain the objection.
MR. HAWKINS: Sustain means?
THE COURT: Well, he says he bought the farm. I think the record shows that Hill Country Farms bought the farm; isn't that right?
THE WITNESS: That is correct.
THE COURT: After Hill Country Farms bought the farm, why, it is none of your business what happened afterwards.
QUESTIONS BY HAWKINS:
Q. What kind of deed do you own as a result of the auction?
A. I really don't rightly know the legal terms, but whatever would be supplied to me, whatever has been supplied to me through the U.S. government.
Q. Do you have it?
A. Again I am not a lawyer, but I can say what I think I know, and that is that we have received proof of ownership and we have filed that with Orange County.
Q. Does it say at the top of it that it is the United States Marshals deed?
A. I wish I knew, but I really don't.
THE COURT: I can tell you that it does because they always do.

MR. HAWKINS: Well, okay. I just wanted him to say that. He refused to.

QUESTIONS BY MR. HAWKINS:

Q. Okay. My barn burnt on me, about March the first or second. Have you received insurance?

MS. MASSEY: Objection. Relevance.

THE COURT: Sustain the objection.

MR. HAWKINS: What insurance company have you insured that property with?

THE COURT: Sustain the objection.

MR. HAWKINS: No further.

THE COURT: That's all. Thank you.

MS. MASSEY: Judge, those are all of the witnesses we have.

I did want to clarify with the Court, however, that in the underlying foreclosure action Mr. Hawkins was represented by counsel and did file an answer with the Court and with the United States and this Court granted the United States' motion for summary judgment in August of last year.

THE COURT: Well, just a minute. That is not the record as I see it.

MS. MASSEY: Can I approach the bench?

THE COURT: Yes. Well, here is what I have.

MS. MASSEY: Okay, either way, I think judgment of foreclosure has been duly entered.

THE COURT: There is no question about that.

MS. MASSEY: I would also ask that the Court take judicial notice of the copies of return of service of the writs of ejectment that we attached to the application to the Court for order to show cause.

THE COURT: Okay, I will do that.

Now, Mr. Hawkins, if you wish to testify or if one

of your friends wishes to testify, you may do so. If they, or either of them, have been advising you in this matter, perhaps they'd like to testify.

MR. HAWKINS: If I testify, do I need to take the witness stand?

THE COURT: Well, that is customary.

MR. HAWKINS: Well, I just wanted to make sure I get in the right spot.

(Defendants' case-in-chief)

AREL B. HAWKINS, DEFENDANT, SWORN

DIRECT EXAMINATION

QUESTIONS PRO SE:

This is Arel Hawkins.

Am I on a time schedule now, your Honor?

THE COURT: Well, it's like this, Mr. Hawkins: You are here because you are charged with contempt. If found guilty of contempt, you could be sentenced to jail for awhile; you could be fined, or both.

Now, we are not here to reargue or relitigate the matter of you owing money, the matter of you not paying money, the matter of mortgage foreclosure or anything like that.

We are here to determine whether you are in contempt of court; in other words, whether you had a good reason not to vacate this property. And anything that you want to say along that line I will be glad to listen to.

MR. HAWKINS: Okay, we'll start around the present and then we'll go back a ways.

At the date of the auction I presented the deputy marshal, and I can't think of his name again, but the one who was on the witness stand here while ago,

with a copy of the last patents I have got on both pieces of properties that sold.

THE COURT: Were they issued to some ancestor of yours or something?

MR. HAWKINS: One of them was.

But the land patents, I am sure you--

THE COURT: Yes, I am quite familiar with a land patent.

MR. HAWKINS: It was out of Virginia, the Department of Interior--not interior, but I can't think of the name of it. But did he get them to you, whatever I gave him? Did there destination get finally there?

THE COURT: No, I haven't seen them. However, I know judicially that a patent deed is a deed from the United States of America to whoever entered the land from the government. In other words, it's the first deed on the property. Then we come to the person who receives the patent deeds owns the land until they sell it, or mortgage it or otherwise dispose of it.

MR. HAWKINS: Well, a patent, the way I understand it, your Honor, is a presidential treaty with the people of the United States.

THE COURT: Well, it is not a treaty with anybody. When the United States got its freedom from Great Britain it claimed to own all of the land in the 13 states which was not already owned by some individual. Then they sold it. They set up land offices in the various stages and people could enter land, that is to say, claim land for a dollar and a half an acre. And after they paid the $1.50 an acre they got a patent deed, originally signed by the president

of the United States.

As time went by and more and more and more lands were entered, the president didn't have time to sign all of those deeds so somebody signed them for him; I think it was the Department of Interior. But anyway, that is what a patent deed is. That is the beginning of private ownership of real estate.

Then as I say, the person who got the deed can make a deed of his own and sell it, or he can borrow money against it and secure a mortgage. And if he doesn't pay his debt the mortgage can be foreclosed.. Or he can die owning it and then his heirs would have it.

There is no question about any of that. That is just ABC of land.

MR. HAWKINS: Well, it says here on this one farm, it gives the land description, section of land--I can't pronounce the word--to the said Joseph Cox heirs and assignees, whatever.

Would I qualify as assignee being recorded at the recorder's office in the county?

THE COURT: Well, whoever Cox sold it to would be assignee, yes.

MR. HAWKINS: How do they take the word "forever" off of it?

THE COURT: Well, forever means until you do something else with it.

Obviously, Mr. Hawkins, the original owners of lands from the government don't own it today.

MR. HAWKINS: It says here heirs or assignees.

THE COURT: That is why they have all of these deed records in the recorder's office, to show where one party sells land to another.

And if you know what an abstract is, an abstract is a history of the title to land. And it starts at the beginning with the government and it takes--sets out the patent and then it sets out all of the sales that have been taking place. That is simple.

MR. HAWKINS: Is land patents still used today?

THE COURT: Well, if the government still owns any land and they sell it to somebody, they would give them a patent for it, sure. But not as to land that has already been patented and then sold and resold and remortgaged and so forth.

MR. HAWKINS: So the only people that hand down a patent is the people and it won't be the government then, would it?

THE COURT: Do you belong to a militia or something?

MR. HAWKINS: No, sir.

THE COURT: Well, you sorta talk like one.

MR. HAWKINS: I am sure these people can check me out. The only person I belong to is Eva. The way I understand it, the railroad still uses land patents today, they keep everything under a patent because you just cannot buy railroad property.

THE COURT: You could if they would sell it.

MR. HAWKINS: Yeah, but they will never give it up. And I understand that Mr. Jimmy Carter, when he was president of this country in the early '80s, he signed the land patent to Yellow Stone National Park and 13 other national parks, so they are still using land patents.

THE COURT: As I said, any time the government sells land they give them a patent deed. So what?

MR. HAWKINS: Well, we'll leave the land patent

deal for right now.

Your Honor, the reason why I think that I shouldn't be held in criminal contempt or civil contempt is right now today I have not seen the statute, the federal statute that gives the federal justice department, the federal court, the jurisdiction to remove me from private ownership of my farm. This has been going on since 1983. I have had two lawyers, one for 11 or 12 years and one for a few months. And I talked to other lawyers. And I searched and I cannot find the statute. Every court has to stay within the boundaries of its own jurisdiction. You know that better than I do. And the reason why I am looking for that, I am looking for it high and I am looking for it low, and if this federal court comes up with a statute, then me as a United States citizen has got the option of deciding whether I want to challenge it or not. But I cain't even find the statute. And I cain't find no where where the Court has the jurisdiction to do what Miss Marsha--I can't think of her name--representing the justice department is asking me to do.

THE COURT: All right, thank you. Oh, you got more?

MR. HAWKINS: Yeah. The reason why I was going on Mr. Gettelfinger, the reason why I was questioning him so hard about the chattel notes that he brought up, I kept wanting him to say why they only go up to seven years, you know, chattel note, the reason why it is for seven years, that is the machinery wears out and the cattle get old and if you haven't paid the bill by then there is probably

nothing left there to pay with.
In the state of Indiana, the chattel note, the limit is seven years. The federal court's document which was revealed to my last lawyer back before you granted the summary judgment, was six years. This all started from 1983. You granted summary judgment on August 7th, 1995.
So, you know, there is a great span of time here. I don't understand why summary judgment was granted on the personal effects, personal property. Even in the state of Indiana on anything but a mortgage note, the statute of limitations is ten years. Of course, a mortgage is 20 years after 1979, I think. From the last time it was paid. That is the reason why I was on Mr. Gettelfinger trying to establish this, that there was too much of a time tolerance there for FMHA having any attachment at all to the personal property.
THE COURT: Let me point out to you that the statute of limitations is a defense but you have to appear and file such defense and if you don't do that you can waive it, or you do waive it.
MR. HAWKINS: I was turned down. I have got the papers where Mr. Kenneth A. Layton was my attorney until all of a sudden he decided to take a 30 day trip into Europe about the time I needed him whenever you granted summary judgment.
THE COURT: Well, did he file the statute of limitations?
MR. HAWKINS: Yes, he filed that and it was not granted. And it was through your court, sir.
THE COURT: Well, maybe the statute of limitations was not the way you think it would be.

Well, anyhow, I have your reasons. Unless you have some more.

MR. HAWKINS: That was on the personal property.

THE COURT: Right.

MR. HAWKINS: Okay, now we are going to talk about the real estate, the real property.

On March the 2nd, 1st or 2nd, my best livestock barn burnt to the ground. And I have got insurance on it. To Farm Bureau. I have had insurance with Farm Bureau approximately 25 years.

I have got a letter here Farm Bureau says it is uninsurable property to them, they have no interest invested and they don't have to pay nothing.

Mr. Jenkins, my sister works in the Farm Bureau office and she typed in the computer--this is odd, you know--it says Mr.Jenkins and Mr. Kemple owns my farms. So they sent me a copy of the marshals deed. The only copy I see is Mr. Jenkins, Hill Country Farms.

Mr. Al Winnick sold Mr. Jenkins the policy on--I don't know what insurance company it is, but he worked with Brooks Galloway Corporation; it is a real estate firm. Anyway, Mr. Jenkins was somehow unable to acquire insurance on my real estate. And I can't find out whether he has been paid for my barn or not, and I can't find out why Mr. Kemple has the right to insure property that he don't even have a marshals deed for.

And the marshals deed is merely a quitclaim deed.

THE COURT: That is true.

MR. HAWKINS: How can the insurance company up and say Mr. Kemple has got a deed for my

property?

How can Mr. Winnick sell insurance to Mr. Jenkins when neither one of them has possession?

I am sure insurance companies has got rules. They have got federal and state rules to operate under. And I have got, you know--this is very puzzling to me. I mean, I know I am behind the eight ball. I know Mr. Jenkins and Mr. Kemple, they are swinging a big stick right now.

But they should have to live under the rules of the land. Just like me. And this here deal, this Mr. Kemple and Mr. Andis being involved with this particular piece of real estate prior to the sale date, no actuality to me. My opinion is that is a conspiracy. They conspired to beat the United States out of money, let alone me. Because that stopped them from having a bid against each other. But like I said, that is my opinion. I don't know what will become of it. And I do have the rules of the land patent back there, and when I get back there I will find them and I will give you a copy of 'em. I asked the deputy marshal to give you both copies of the patents and the rules.

Can I go get 'em?

THE COURT: Yes. Or he can bring it to you, either way.

MR. HAWKINS: There is one thing in the rules here. I want it all on federal tape. Give me just a minute and I will position myself here.

This is out of the land office. These rules are. We'll start with A and work down; surely I will find it: "A declaration of land patent is the highest and best title at law.

"B Once the sale is complete the property can never be resold.

"C A warranty deed can never be drafted on this property."

MS. MASSEY: I am going to object. Once again, the judgment and decree and foreclosure was entered and that is a matter that is the law of the case here. And this is really not relevant.

THE COURT: Well, I will be glad to accept that in evidence if you want to put it in evidence.

MR. HAWKINS: You won't let me read it on tape, sir.

THE COURT: Well, I can read it. I read reasonably well.

MR HAWKINS: Well, I would like to read it on tape.

THE COURT: I don't know what you mean, read it on tape?

MR. HAWKINS: Well, there is the record keeper.

THE COURT: If you put it in evidence it is a part of the case, Mr. Hawkins.

MR. HAWKINS: I am going to leave it with you, but I would like to read it, sir, if you would let me.

THE COURT: Okay. Go ahead and read it.

MR. HAWKINS: "A warranty deed can never be drafted on this property.

"D. The buyer or successful bidder of the property will not be able to borrow or get a mortgage against the land.

"E. Title insurance cannot be obtained for this property.

"F. A declaration of land patent clouds title to land forever.

"G. The successful bidder of the property will not get possession of the property.

"H. The--

This is telling--of course, you have got to read the whole thing but I am just reading what happens if they go ahead and have a sale like was done on my property.

"H. The declaration of land patent stops ejectment.

"I A sheriff's deed or other type of document transfers shall be proof of fraud. The notification that a patent exists before the transfer shall be sufficient for this charge.

"J. Criminal trespass, civil and charges for fraud will be filed against the successful bidder and all those who took part in the forced transfer of the property. The notification that a patent existed before the transfer shall be sufficient for the charges stated.

"K. Obtain a certified copy of the deed of transfer or sheriff's deed. Proof of the charges stated will be necessary to the attorney general." Which so happens works for the United States Justice Department.

"L. Mortgage or lending institution may bid the existing mortgage or lien. This shall not be sufficient notice for fraud. The transfer of the property to a second person or persons in the form of the stated above is what will be necessary to obtain. Bidding of mortgage or lien is not sufficient and cannot cancel a declaration of land patent. While a 'no bid' is better for a lending concern to bid, the existing lien is a formality and is not powerful enough to overcome a patent.

"M. The holder of a land patent which has been certified, the filing of a declaration of land patent shall present to the holder all of the rights and privileges forever. This is stated on the front of the certified copy of the land patent, which was obtained from the Bureau of Land Management, Department of the Interior of the United States of America.

THE COURT: All right, may I see that, please.

MR. HAWKINS: You can have them copies too. Or you can make copies of them. Whatever you want to do.

THE COURT: Make that Defendants' Exhibit A.

MR. HAWKINS: And what is puzzling to me, sir, is that--my mind quits me every once in a while--Janet Reno's position; what is her job again?

THE COURT: Let me ask you a question.

MR. HAWKINS: Okay.

THE COURT: Where did you get this?

MR. HAWKINS: Where did I get this?

THE COURT: Yes.

MR. HAWKINS: A friend of mine gave it to me.

THE COURT: Who?

MR. HAWKINS: Charlie Hopewell.

THE COURT: Is he here today?

MR. HAWKINS: No, he isn't.

THE COURT: And is he a member of the militia?

MR. HAWKINS: Not that I know of.

THE COURT: Well, you who is laughing, who are you?

MR. MURPHY: I am Reverend Delbert Murphy.

THE COURT: You are what?

MR MURPHY: Reverend Delbert Murphy.

THE COURT: And I believe you produced this; is that right?

MR. MURPHY: No, sir. I handed it to him. If you call that producing.

THE COURT: I see. Okay, what did Mr. Hopewell tell you when he gave you this?

MR. HAWKINS: He told me that came right out of the Department of Interior; that was the rules.

THE COURT: He said that?

MR. HAWKINS: Yeah. I have got the hard copy of the patent, sir, with the seal on it.

THE COURT: I am not interested in that. I am interested in this thing here, which is just as wrong as anything could be and just as wrong as anything I have ever seen in this court. And I recognize it as a phony document put out by one or more of the these so-called militias who encourage people to violate the laws of the United States.

Do you happen to know Mr. Hopewell's name, do you?

Well, write it down.

Where does he live?

MR. HAWKINS: Orange County.

THE COURT: Well, that is a big county.

Whereabouts in Orange County?

MR. HAWKINS: Oh, Greenfield Township.

THE COURT: Well, never mind, I can find it. We'd like to know who is formenting trouble by putting out stuff like this, which is just so--! All right. Now, do you have anything else?

You are not Joseph Cox, are you?

MR. HAWKINS: No, I am not.

THE COURT: Are you Jonathon Lindley?

MR. HAWKINS: No, I am not.
THE COURT: So much for that.
MR. HAWKINS: I'd like to go back to 1983.
MS. MASSEY: May I object as to relevance.
THE COURT: Well, we have got another hour here until noon.

.

MR. HAWKINS: My lawyer back then was Roger Davis, out of Corydon, Indiana. I filed reorganization, Chapter 11, I think it was in June of 1983.
THE COURT: And then you dismissed it?
MR. HAWKINS: it got dismissed in '88, I think.
THE COURT: It was dismissed anyway?
MR. HAWKINS: Yes. But what I was getting at, sir, it was in April, May of '83 I went to FMHA, the district office at Bloomfield, Indiana. All I wanted was release of UCC so I could put out a crop that spring. I wasn't able to pay back the money to FHA for the last year's operating money, and I knowed they wouldn't loan me the money to operate again.. And I went to FHA. Emerson Martin was the county supervisor in '83. He had a couple other gentlemen there. One man's last name, I think it was Partentimer (phonetic). I had a company by the name of CFS--it was a chemical company--that was going to credit me I think it was $70,000 for seed, fertilizer and chemicals. I had about 20 or 24 landlords that was going to credit me the land rent to go ahead and put out the crop, until the crop was sold.
-But CFS wanted a release on the UCC because every year you sign a UCC it goes in existing time

five years down the road. They wouldn't release it. That come back in the room. Mr. Partentimer told me, said This is what we want you to do, Mr. Hawkins: we want you to go home, get your wife and kids, gather up your dirty clothes, leave your clean clothes, put your dirty clothes in a tote bag and walk down the road.

So that is when I left and acquired Mr. Roger Davis to handle this money problem that I had. So under his advice, I might have been wrong, might not have, I don't know, but we decided to file Chapter 11 and go ahead and farm.

And I can't think of the federal bankruptcy judge. I am sure you know him. He has passed on since '83. He was a heavy smoker and I think it was his heart, lung cancer or something, but anyway he is gone. But anyway, FHA come and we come in front of the federal law clerk once and in front of the federal judge twice.

And FHA owned up to asking me to leave, wanting me to leave the farm. This was all the way back in '83.

And that has got to be on federal tape.

If there is any dispute on whether I was asked to shut down, if that is not acceleration of a note I do not know what it is.

And this happened in June and July of '83.

I just wanted it on the record that as far as I am concerned--and I wanted the Court to know where I am coming from here, that this note to my notion was accelerated in 1983. If that has any effect on the personal property, why so be it.

I guess I am done right now.

MS. MASSEY: Judge, I would like to ask a couple of cross-examination questions, if I may.

THE COURT: All right, go ahead.

CROSS-EXAMINATION

QUESTIONS BY MS. MASSEY:

Q. Mr. Hawkins, have you read the Court's writ of ejectment that was issued on March 28th, 1996?

A. Yes, I have.

Q. Are you still living on the propoerty?

A. Yes, ma'am.

MS. MASSEY: No further questions.

THE COURT: That is all, thank you.

MR. HAWKINS: Are you going to make copies of them, or what?

THE COURT: You can have these patents back if you want them.

MR. HAWKINS: Well, you may make copies of them too. That is all these are.

THE COURT: Well, we don't need them. As I said earlier, they don't mean anything: After the original patent is issued, then whoever received the property could sell it and so on. Obviously, he did sell it because somebody else owns the property today. You did until it was sold.

Well, the facts are that you and Mrs. Hawkins mortgaged your propoerty, both real and personal, and as previously stated, and as I believe you have admitted, you didn't pay what you owed when it was due. That's not a criticism.

The Court is well aware of the fact that farming has been a very chancy business for many, many years. And the fact that you were unable to pay is just one of those things. Many other farmers have had the

same experience and have similarly been foreclosed. The difference between you and all of the others is that they knew that they owed the money, they knew that they hadn't paid it, they knew that their property was mortgaged, they knew that it would eventually be foreclosed and sold, and when it was they knew that they were supposed to leave the property and did so.

In the 35 years that I have been sitting on this bench, you were the first person who has refused to leave the land after it has been sold. And, therefore, you are certainly in contempt of this Court and its orders. And I would be justified in fining you and perhaps giving you a few days in the county jail. However, I am not going to do that. That is, I am finding you in contempt, but I am not going to punish you today because it is obvious to me that you have been the recipient of some very foolish and very bad advice, very incorrect advice and that you have elected to receive it as the gospel in order to justify your staying on the land.

So I am going to withhold any sentence at this time. But I will once again order you in person, that you and Mrs. Hawkins are to leave that land forthwith. And forthwith means--well, it really means today. It is a rainy day. We'll give you till the end of the week. And if you are not gone by the end of the week, I can assure you that you will be punished for contempt.

That will be all.

WHEREFORE, court adjourned at 11:10 a.m.

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled

matter.

S/ Martha L. Rodebeck7-30-96

Martha L. Rodebeck

Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF,
V. NO.
94-88-C-D/H
AREL B HAWKINS, EVA J HAWKINS
AND TREASURER, ORANGE COUNTY
DEFENDANTS.

WRIT OF EXECUTION

TO THE UNITED STATES MARSHAL:

On August 7, 1995 a judgment was entered in the United states District Court for the southern District of Indiana, in favor of the United States of America, plaintiff, and against the defendants, Arel B. Hawkins and Eva J. Hawkins, Route 2, Paoli, Indiana, 47454, in the sum of $1,002,844.02.

Since entry of judgment, costs and interest have accrued according to law. Computation of the debt as of May 2, 1996, is the judgment amount of $1,002,844.02; plus accrued interest at the rate of 5.7%, compounded annually, for a total of $1,025,680.62.

Now, therefore, you are hereby directed to satisfy the judgment by levying on and selling all property in which defendants have a substantial nonexempt interest, and by executing upon the property described below:

A safe containing U.S. currency located at Route 2, Paoli, Indiana, or at East Highway 150, Paoli, Indiana.

You are also directed to collect interest thereon from the date hereof with your costs and expenses and make return of this writ within ninety days after the date of issuance if levy is not made, or, within ten days after the date of sale of property on which levy is made.

You are further directed that the levy and sale shall not exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs and interest.

You are further directed that in performing the levy, you may enter any property owned, occupied or controlled by the debtor, including the debtors' residences located at Route 2, Paoli,Indiana, and at East Highway 150, Paoli, Indiana.

You are further directed to file the Notice of Levy in the same manner as provided for judgments in 28 U.S.C. 2301(a)(1) and to serve a copy of the Writ and Notice of Levy on the defendants and the persons who have possession of the property in the same manner that a summons is served in a civil action.

It is so orders.

Date: May 6, 1996 S.
Hugh Dillin

Judge,

United States District Court

D58

Southern District of Indiana

D60

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA
V

WARRANT FOR ARREST
AREL B HAWKINS

CASE

NUMBER NA 94-88-C-D/H

To: The United States Marshal
and any Authorized United States Officer

You are hereby commanded to arrest Arel B. Hawkins and bring him or her forthwith to the nearest magistrate to answer a order of court finding him or her with contempt of court in violation of title 18 United States Code, Section 401(3)

S Hugh Dillin

Judge United States District court
(Name of issuing Officer)
(Title of issuing officer)

This warrant was received and executed with the arrest of the above-named defendant at RR 2, Paoli,

IN.
Date received: 5-6-96
Dated of arrest: 5-6-96
Name and title of arresting officer: Clarence Switzer, Sheriff Orange County

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA
PLAINTIFF
V

NO.

NA 94-88-C-D/H
AREL B. HAWKINS, EVA J
HAWKINS AND TREASURER
ORANGE COUNTY
DEFENDANTS

NOTICE OF LEVY

TO THE ABOVE NAMED DEFENDANTS AND ALL OTHER PERSONS INTERESTED: TAKE NOTICE THAT ON THE 6TH DAY OF MAY, 1996, BY VIRTUE OF AN EXECUTION ISSUED OUT OF THE ABOVE-NAMED COURT IN THE ABOVE-ENTITLED ACTION ON THE 6TH DAY OF MAY, 1996, I HAVE LEVIED UPON THE FOLLOWING DESCRIBED PROPERTY LOCATED IN THE COUNTY OF ORANGE, STATE OF INDIANA, AND ALL THE RIGHT, TITLE, AND INTEREST OF SAID DEFENDANTS THEREIN, TO WIT:

A SAFE CONTAINING U.S. CURRENCY LOCATED AT ROUTE 2, PAOLI, INDIANA, OR AT EAST HIGHWAY 150, PAOLI, INDIANA.

THAT THE PARTIES TO SAID ACTION

ARE THE UNITED STATES OF AMERICAN, PLAINTIFF, AND AREL B HAWKINS AND EVA J HAWKINS, DEFENDANTS; AND THAT THE AMOUNT OF PLAINTIFFS CLAIM AND DEMAND, AS STATED IN THE SAID EXECUTION, IS THE SUM OF 41,025,680.62, WHICH CONSISTS OF PRINCIPAL OF 41,002,844,02, ACCRUED INTEREST OF $22,836.60 AS OF MAY 2, 1996 AND INTEREST THEREAFTER AT THE RATE OF 5.7%, TOGETHER WITH COSTS OF THIS SERVICE.

FRANK ANDERSON, UNITED STATES MARSHAL

SOUTHERN DISTRICT OF INDIANA

BY: DEPUTY UNITED STATES MARSHAL

D66

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF
V NO.
NA 94-88-C-D/H
AREL B HAWKINS, ET AL.,
DEFENDANTS

NOTICE AND ORDER TO
CONTEMNOR, AREL B HAWKINS

In light of the affidavits filed in this court on May 6, 1996, by the United States of America, which establish that Arel B. Hawkins has still not vacated the real property in violation of the court's Writ of Ejectment and the order issued to Arel B. Hawkins from the Court on April 29, 1996, the Court has determined that in order to coerce the compliance of Arel B. Hawkins with its lawful orders, Arel B. Hawkins has been remanded to the custody of the united States Marshal until such time as he is purged from contempt.

The purpose of the civil contempt imposed against Arel B. Hawkins is entirely remedial. He shall be purged when the court is advised that his belongings have been removed form the property and the United States of America, Farm Service Agency, has obtained the personal property to which it is entitled under the mortgage foreclosed upon in this cause.

The Clerk for this District or her deputy shall forthwith deliver a copy of this Notice to Arel B. Hawkins by certified mail at the place where is resides and shall make a return showing the time and place of such service. This service shall include a copy of the "Entry on Proceedings for April 29, 1996: which has been issued this date.

It is so ordered.

Dated: May 8, 1996 S. Hugh Dillin, Judge

United States District Court

Southern District of Indiana

INSTRUCTIONS REGARDING SERVICE;

Please personally serve and forthwith on Arel B. Hawkins, including service of the accompanying "Entry on Proceedings for April 29, 1996."

Copies to:
Marsha C. Massey
Assistant United States Attorney
Office of the United States Attorney
5th Floor, U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

Eva J. Hawkins
East Highway 150
Paoli, Indiana 47454

D68

United States Marshal
179 U.S. Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs. No. NA
94-88-C (D/H)
AREL B. HAWKINS, ET AL.,
Defendants

ENTRY AND ORDER FOR MAY 9, 1997

This matter came before the undersigned United States Magistrate Judge when the defendant, Arel B. Hawkins, appeared for an initial appearance in Cause Number NA 96-6-CR, United States of America V. Arel B. Hawkins on May 9, 1996. Mr. Hawkins appeared in person and by Linda Thompson, who entered her appearance on that date. The government appeared by Marsha Massey and Mark Stuaan, Assistant United States Attorneys.

Both this case and the criminal matter were drawn on the calendar and docket of the Honorable S. Hugh Dillin, District Judge. The Magistrate Judge contacted Judge Dillin and discussed with him the forthcoming initial appearance on the criminal matter. The Magistrate Judge did so because he was aware that Judge Dillin had found Mr. Hawkins in contempt in this cause and committed him to the custody of the U.S. Marshal until he purged himself of the contempt. Judge

Dillin instructed the Magistrate Judge regarding his holding of Mr. Hawkins in contempt and instructed the Magistrate Judge regarding the proper disposition of Mr. Hawkins' continued custody if he had purged himself of contempt or alternately if the government had removed the personal property, etc. from the acreage at issue in this cause which would purge Mr. Hawkins of contempt, coupled with his agreement to conditions of release in the pending criminal matter which would prohibit his return to and entering upon the acreage located in Orange County, Indiana, at issue in this case.

Mr. Hawkins agreed at the conclusion of the initial appearance on the criminal matter to conditions of release which, among other things, prohibited him from returning to or entering upon the acreage located in Orange county, Indiana, at issue in this cause.

For these reasons, with the express instruction of the Honorable S. Hugh Dillin, Mr. Hawkins was ordered released from the custody of the United States Marshal from the order of contempt of Judge Dillin.

Kennard P. Foster, Magistrate Judge

United States District Court

Southern District of Indiana

cc:

Marsha C. Massey, Assistant United States

Attorney, 5th floor, United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204
Linda Thompson, 3850 S. Emerson Avenue, #E, Indianapolis, IN 46203
U.S. Marshal
U.S. Parole and Probation

D72

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF,
V

NO.

NA 94-88-C (D/H)
AREL B HAWKINS, ET AL.,
DEFENDANTS

ENTRY AND ORDER FOR MAY 9, 1996

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committed him to the custody of the U.S Marshal until he purged himself of the contempt. Judge dillin instructed the Magistrate Judge regarding his holding of Mr. Hawkins in contempt and instructed the Magistrate Judge regarding the proper disposition of Mr. Hawkins' continued custody if he had purged himself of contempt or alternatively if the government had removed the personal property, etc. fromthe acreage at issue in this cause which would purge Mr. Hawkins of contempt, coupled with his agreement to conditions of release in the pending criminal matter which would prohibit his return to and entering upon the acreage located in Orage County, Indiana, at issue in this case.

Mr. Hawkins agreed at the conclusion of the initial appearance on the criminal matter to conditions of release which, among other things, prohibited him from returning to or entering upon the acreage located in Orange County, Indiana, at issue in this cause.

For these reasons, with the express instruction of the Honorable S. Hugh Dillin, Mr. Hawkins was orered released from the custody of the United States Marshal from the order of contempt of Judge Dillin.

Kennard P. Foster, Magistrate Judge

United States District Court

Southern District of Indiana

cc:
Marsha C. Massey, Assistant United States Attorney, 5th Floor, United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204

Linda Thompson, 3850 S. Emerson Avenue, #E, Indianapolis,IN 46203
U.S. Marshal
U.S. parole and Probation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF,
V.

NO.

NA 94-88-C-D/H
AREL B. HAWKINS, EVA J HAWKINS
AND TREASURER, ORANGE COUNTY
DEFENDANTS

CLERK'S NOTICE OF POST-JUDGMENT EXECUTION

You are hereby notified that this property located at route 2, Paoli, Indiana, or at East Highway 150, Paoli, Indiana, is being taken by the United States of America which has a judgment in NA 94-888-C-D/H in the sum of $1,002,844.02 plus interest for a deficiency in a foreclosure action. A balance of $1,025,680.62 remains outstanding.

In addition, you are hereby notified that there are exemptions under the law which may protect some of the property from being taken by the Government if Arel B. Hawkins and Eva J. Hawkins can show that the exemptions apply. Attached is a summary of the major exemptions which apply in most situations in the State of Indiana:

You mus elect to claim exemptions either

under Category A or Category B below. You must choose between these categories to claim an exemption. Please note that the exemptions available under Category B include certain exemptions under Indiana law. If you are a resident of a state other than Indiana, property different than that listed in Category B may be exempted according to the law of the state of your residence. If the sole collection remedy requested by the United States is a garnishment against your earnings, wages or income, it is not necessary to claim the full wage exemption allowed by law in order to receive the wage deduction. The exemption will be automatically applied.

Category A

The first group of exemptions consists of property that is specified in section 522(d) of Title 11 of the United States Code and which consists generally of the following property:

(a) $7,500 iniquity in a residence;

(b) $1,200 in equity in one motor vehicle;

(c) $500 in jewelry;

(d) $4,000 total value in personal property (not to exceed $200 for any one item);

(e) $400 plus up to $3,750 of any unused amount of the exemption in paragraph (a), in any property;

(f) $750 in tools of the trade of the debtor;

(g) Any unmatured life insurance contract owned by the debtor;

(h) Up to $4,000 in an accrued dividend, interest in or loan value of a matured life insurance policy;

(I) Professionally prescribed health aids for the debtor or dependent of the debtor;

(j) Debtor's right to receive social security benefits; unemployment compensation; a public assistance benefit; a veteran's benefit; a disability, illness or unemployment benefit; alimony, support or separate maintenance (to a limited extend); and subject to certain limitations, a payment under a stock bonus plan, pension plan, profit sharing plan, annuity, or similar plan, and

(k) Debtor's right to receive, or property traceable to: an award under a crime victim's law; a payment for the wrongful death of a person of whom the debtor was a dependent; a payment of life insurance proceeds with respect to a person of whom the debtor was a dependant on the date of death or injury; up to $7,500 of a personal bodily injury award; a payment in compensation of loss of future earnings.

NOTE YOU MUST CHOOSE BETWEEN CATEGORY A AND B

Category B (Federal and Indiana Exemptions)

Federal Exemptions.

a. Social Security benefits and supplemental security income (42 U.S.C. 407);

b. Veterans' benefits (38 U.S.C. 3101);

c. Members of armed services (10 U.S.C. 1440, 38 U.S.C. 562)

d. Federal civil service retirement benefits (5 U.S.C. 8346 and 22 U.S.C. 4060 (c));

e. Annuities to survivors of federal judges (28 U.S.C. 376(n);

f. Longshoremen and Harbor workers compensation Act (33 U.S.C 916);

g. Black lung benefits (30 U.S.C. 931(b)(2)(F) and 932 (a));

h. Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C.A. 1108-1109(a-c));

i. Railroad retirement, pension, unemployment benefits (45 U.S.C. 231(m), 352(e).

Indiana Exemptions

a. Homestead or Residential Property $7500 in real estate or personal property constituting the personal or family residence of the judgment debtor or a dependent of the judgment debtor. The exemption is individually available to joint tenants or tenants by the entirety. (Ind. Code 2 14-2-28-1(a)(1));

b. Tangible Property other than Homestead residence. $4,000 in any tangible personal property or non-residential real property. (Ind. Code 2-28-1(a)(2));

c. Intangible Personal Property--$100.00 (Ind. Code 34-2-28-1(a)(3);

d. Professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor. (Ind. Code 2 34-2-38-1 (a)(4));

e. Uniforms, arms, and equipment of a member of the National Guard. (Ind. Code 2 30-2-6-3);

f. Real Estate owned in tenancy by the

entireties. (Note: exemption is not available if co-tenant is liable on same debt for which judgment debtor is liable), (Ind. Code 2 34-2-28-1(a)(5));

g. Unemployment Compensation (Ind. Code 22-4-33-3);

h. Claims for Workmen's Compensation (Ind. Code 22-3-2-17);

I. Specific Partnership Property (Ind. Code 23-4-1-25);

j. Public Employees' Pension and Retirement Benefits (Ind. Code 5-10-3-8-9 and 36-8-10-19);

k. Insurance and Policies proceeds (Ind. Code 27-1-12-14, 27-2-5-1 and 27-8-3-23);

l. Crime Victims Compensation (Ind. Code 16-7-306-15);

m. Fraternal Benefit society benefits (Ind. Code 27-11-6-3);

n. Pension fund, retirement fund, annuity plan, I.R.A., or similar fund. (Ind. Code 34-2-28-1 (a)(6));

o. Indiana Legislator's benefits (Ind. Code 2-3-5-4-11 and 2-3-5-5-9);

If you are Arel B. Hawkins or Eva J. Hawkins, you have a right to ask the court to return your property to you if you think you do not owe the money to the Government that it claims you do, or if you think the property the Government is taking qualifies under one of the above exemptions.

If you want a hearing, you must notify the court within 20 days after receipt of the notice. You must make your request in writing and either mail it

or delivery it to the Clerk of the United States District Court at 46 East Ohio Street, U.S. Courthouse, Room 105, Indianapolis, Indiana 46204. If you wish, you may use the last page of this notice, entitled Request for Hearing, to request the hearing by filling out the information and checking an appropriate box, if applicable to you. You must either mail he Request for Hearing or delivery it in person to the Clerk of the United States District Court at 46 East Ohio Street, U.S. Courthouse, Room 105, Indianapolis, Indiana 46204. You must also send a copy of your request to the United States Attorney at 5th floor, U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, so the Government will know you want a hearing. The hearing will take place within 5 days after the Clerk receive your request, or as soon after that as possible.

At the hearing you may explain to the judge why you believe the property the Government has taken is exempt or if a default judgment has been entered against you why you think you do not owe the money to the government. If you do not request a hearing within 20 days of receiving this notice, your non-exempt wages or earnings will be paid on the debt you owe the Government.

If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or

deliver it in person to the Clerk of the United States District Court, 46 East Ohio Street, U.S. Courthouse, Room 105, Indianapolis, Indian 46204. You must also send a copy of your request to the Government at United States Attorney, 5th Floor, U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, so that the Government will know you want the proceeding to be transferred.

Be sure to keep a copy of this notice and the request for a hearing for your records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the Clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.

Date: May 6, 1996
Geraldine Treutelaar Crockett, Clerk

United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF
V

NO.

NA 94-88-C-D/H
AREL B HAWKINS, EVA J.
HAWKINS AND TREASURER OF
ORANGE COUNTY
DEFENDANTS

REQUEST FOR A HEARING

Pursuant to 28 U.S.C. 3202 I request that the Court hold a hearing in this matter and further state that:

A default judgment was entered against me and I wish to present evidence on why I do not owe money to the Government.

I am writing in response to the "Clerk's notice of post-judgment proceedings' which was given to me on May 6, 1996 while I was a federal prisoner in the Marion County jail.

The "notice" says that I may be entitled to a hearing to explain to the Judge "if a default judgment was entered against you and why you do not think you owe money to the Government."

A default judgment was entered against my wife and me on August 7, 1995. My lawyer told me that there would be no hearing and that I did not have the right to give evidence to the judge.

I do not believe that I owe the Government the amount of the judgment because the Court did not hear any evidence from me of the Government's slanders against me and interference with my private contracts. If the Judge had heard such evidence, the Court would have ruled against the Government.

I am requesting the Federal Statue that give the United States Federal Court the jurisdiction to foreclose on private property in a civil case. Also, I want to know the procedure the United States uses to give a warranty title to the "so-called" successful bidder in a federal foreclosing procedure for the property in dispute which is Federal Land Grant property.

Thank you for your consideration.

Signature: _____

Name: Arel B. Hawkins
Address: P.O. Box 163
Paoli, IN 47454
Home Phone No: 812-723-4329

Returned this request to:
Clerk's Office
United States District Court
U.S. Courthouse, Room 105
Indianapolis, Indiana

Sent Copies of this request to:
Marsha C. Massey
Assistant United States Attorney
5th Floor, U.S.courthouse
46 East Ohio Street
Indianapolis, IN 46204

APPENDIX E

DATE	NR.	PROCEEDINGS
05/08/96	1	INFORMATION FILED MISDEMEANOR eod 05/16/96 (bjs)
05/09/96	2	WARRANT ISSUED eod 05/16/96 (BJS)
05/09/96	3	COURTROOM MINUTES - Deft appeared in person & w/retained cnsl Linda Thompson for initial appearance on Information before Magistrate Judge KP Foster in Indpls. Govt represented by Mark Stuaan, AUSA & Marsha Massey, AUSA; US Probation represented by Brandon Brewer, c/m from Indpls eod 05/16/96 (BJS)
05/09/96	=	CHARGES & RIGHTS & PENALTIES read and explained eod 05/16/96 (BJS)
05/09/96	=	FORMAL ARRAIGNMENT conducted; pleas of not guilty entered on behalf of deft eod 05/16/96 (BJS)
05/09/96	=	RELEASED ON OWN RECOGNIZANCE W/PERSONAL SURETY pending further proceedings eod 05/16/96 (BJS)
05/09/96	4	APPEARANCE of Linda Thompson for deft eod 05/16/96 (BJS)
05/09/96	5	USM RETURN on warrant

		executed May 9, 1996 eod 05/16/96 (BJS)
05/09/96	###	REASSIGNED from Judge Barker to Judge Dillin eod 05/30/96 (KTK)
05/29/96	6	ORDER ASSIGNS COURT TRIAL to 06/25/96 at 09:30AM Room 243 (SHD) c/m from IP eod 06/04/96 (KTK)
06/12/96	###	REASSIGNED from Judge Dillin to Judge Barker eod 06/17/96 (KTK)
06/14/96	7	ENRY VACATES COURT TRIAL of 06/25/96 at 09:30 AM Room 243 (SHD) c/m from IP eod 06/20/96 (KTK)
06/20/96	8	ENTRY ASSIGNS COURT TRIAL to 07/10/96 at 09:30 AM Room 216 (SEB) c/m from Indy (c/m USPO/NA) eod 06/21/96 (BJS)
07/02/96	9	MOTION IN LIMINE by pltf, c/s eod 07/05/96 (BJS)
07/09/96	10	MOTION TO CONTINUE July 10, 1996 court Trial, by pro se deft, c/s (filed in Indpls) eod 07/11/96 (BJS)
07/09/96	=	MOTION for PreTrial Conference, by pro se deft, c/s (Filed in Indpls) eod 07/11/96 (BJS)
07/09/96	11	ORDER VACATES COURT TRIAL of 07/10/96 at 09:30 AM room 216 (SEB) c/m (10) eod

		07/11/96 (BJS)
07/09/96	=	ORDER REASSIGNS COURT TRIAL to 07/31/96 at 09:30 AM Room 216 (SEB) c/m eod 07/11/96 (BJS)
07/09/96	=	ORDER - if deft's cnsl intends to withdraw, she is directed to file motion to withdraw in writing forthwith (SEB), c/m eod 07/11/96 (BJS)
07/09/96	=	ORDER ASSIGNS HEARING to 07/16/96 at 02:00 PM Room 270 (KPF) c/m (Hrg to inquire into status of deft's representation; should cnshl appear for deft, hrg will be vacated) eod 07/11/96 (BJS)
07/09/96	=	ORDER the period of delay from this date to July 31, 1996 shall be excluded in computing the time within which the trial of this offense must commence pursuant to 18USC 3161 (h) (8) (B) (iv), (SEB), c/m eod 07/11/96 (BJS)
07/09/96	=	ORDER - deft's pro se Motion for Pre Trail Conference is TAKEN UNDER ADVISEMENT (10) (SEB), c/m eod 07/11/96 (BJS)
07/12/96	12	APPEARANCE of James W. Bradford for deft Arel B Hawkins (filed in IP) eod 07/15/96 (KTK)
07/29/96	13	MOTION TO CONTINUE July 31, 1996 Court Trail, by deft, c/s

		eod 07/31/96 (BJS)
07/31/96	14	TRIAL COMMENCES - govt represented by AUSA Marsha C Massey; deft appears w/counsel; opening sttements by parties; pltf present evidence & rests; after argument heard, DENIES deft's Mot for judgment as a matter of law; deft presents evidence & rests; rebuttal evidence by pltf; final arguments by parties. COURT FINDS deft guilty of contempt as charged & proceeds to sentencing. The deft & counsel are heard. Eod 08/06/96 (KTK)
07/31/96	=	COURTROOM MINUTES - Court imposes sentence: probation for 3 months w/special conditions: 1)detention for 5 days in Vanderburgh Halfway House; & 2)8 hours week of community service. Deft voluntary surrender eod 08/06/96 (KTK)
07/31/96	15	JUDGMENT ENTERED COUNT: 1 PROBATION: 3 months Standard & special conditions of Supervision - See Judgment ASSESSMENT: 10.00 SCHEDULE OF PAYMENTS: in full immediately (SEB) J&C dated 8/2/96, c/m USA, USM, USPO/NA, cnsl & deft OBV 10 PG 20 eod 08/06/96 (KTK)

07/30/96	16	ENTRY DENYING deft's verified Mot for continuance of July 31, 1996 trial, (13) (SEB), notified from IP BEW eod 08/07/96 (KTK)
08/15/96	17	NOTICE OF APPEAL of Judgment imposed 7/31/96, by deft. C/m to USA by Clerk eod 08/16/96 (BJS)
08/15/96	18	APPEAL FEES PAID RECEIPT #08585 - $105.00 Filing fee eod 08/16/96 (BJS)
08/16/96	19	SHORT RECORD SENT TO CA w Notice, Info Sheet & docket Sheet & certified copy of Judgment of 7/31/96 eod 08/16/96 (BJS)

UNITED STATES DISTRICT COURT DOCKET
DATE PRINTED: 08/16/96

E6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA
V.
AREL B HAWKINS

WARRANT FOR ARREST

CASE NUMBER NA 96-6-CR

To: The United States Marshal
And any Authorized United States Officer

You are hereby commanded to arrest Arel B. Hawkins and bring him or her forthwith to the nearest magistrate to answer an information charging him or her with contempt of court in violation of title 18 United Sttes Code, Section 401(3)

Geraldine T. Crockett

Clerk
(Name of issuing Officer)

(Title of Issuing Officer)

May 9, 1996

(Date and location)

RIGHTS FORM
(REV. 8/87

SDI FORM B-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
MAGISTRATE

CAUSE NO. NA 96-6-CR-B/H

CAUSE NO. IP-

STATUTE: 18:401(3)

1. Defendant's Name: Arel B. Hawkins

2. Offense Charged: Criminal Contempt

3. You are before a United States Magistrate and at the close of these proceedings you will be requested to sign an acknowledgment.

4. A complaint has been filed charging you with a violation of the laws of the United States, in particular, a violation of (the Magistrate reads the complaint).

5. You have a right to be represented by counsel and to retain an attorney before proceeding with this hearing. If you are financially unable to obtain the services of an attorney, I shall appoint one to represent you at this hearing without expense to you or you may waive the right to be so represented in any further proceedings before a United States District Judge. There is an attorney present and available to confer with you at this time.

If an attorney is appointed for you, he will continue to represent you until he is relieved by order of the district court. (Defendant was given the opportunity to complete CJA Form 1 or 3a or, if defendant waived the right to counsel, the opportunity to complete SDI Form D.)

6. The Magistrate observes that Linda Thompson, your attorney, is here, but it is still my responsibility to explain your rights.

7. You are further advised that you re not being called upon at this time to plead guilty or not guilty to the charge(s) in the complaint; you are not required to make any statement at this time or at any other time when you are in custody; and any statement you make, either orally or in writing, can be used against you.

8. You have the right to have the preliminary hearing on the charges in the complaint to determine whether or not there is probable cause to believe that you committed the offense with which you are charged. Alternatively you may waive the preliminary hearing. If you demand a preliminary hearing, the government will be required to produce sufficient evidence by witnesses to establish probable cause to believe that you committed the crime with which you are charged. If the government is not able to produce such evidence, you will be released immediately, but the government may submit your case to a grand jury and attempt to secure an indictment against you for

the same offense and, if such indictment be returned, you would be rearrested. If you waive you right to a preliminary hearing, the government will not be required to produce evidence against you.

9. You are further advised that you are entitled to be considered for pre-trial release under terms and conditions fixed by the court to insure your appearance at trial.

In a limited number of cases, the United States may ask for pre-trial detention. Detention can only be imposed after a hearing and only if the court decides no release conditions are adequate to protect the community and-or insure your attendance at trial.

10. Defendant acknowledges that the Magistrate has made the statements herein and that the defendant has received a copy.

Reserving all rights and privileges,
Dated: 5-9-96
Arel Hawkins (signed)

Defendants signature

I certify that the defendant was advised of his rights in the manner set forth above and that he signed the acknowledgment.
Dated: 5-9-96
Kennard P. Foster

United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF,
V.
CAUSE NO. NA 96-6-CR
AREL B. HAWKINS,
DEFENDANT.

You have been charged in an: Information with a violation of the laws of the United States of America. The maximum penalties are as follows:

Count Number	Statute	Years	Supervised Release	Other Conditions
1	18:USC:401(3)	6 mos	NMT 1 yr	$5,000 fine

Reserving all rights & privileges,
Dated: 5/9/96
Arel Hawkins (signed)

Defendant

I certify that the defendant was advised of the maximum penalties in the manner set forth above

and that he signed the acknowledgment.

Kennard P. Foster

United States Magistrate Judge

Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF,
VS.

NA

96-6-CR
AREL B. HAWKINS
DEFENDANT

ORDER

The defendant's unopposed motion to continue the July 10, 1996, trial date previously assigned is hereby granted, and this cause is hereby reassigned for trial to the Court on Wednesday, July 31, 1996, in room 216, U.S. courthouse, Indianapolis, Indiana. The defendant's motion for pretrial conference is taken under advisement.

The defendant has requested a continuance in order to seek different counsel. Counsel who entered an appearance in this cause has verbally informed the court, and apparently the defendant and counsel for the government, of her intention to seek to withdraw her appearance. If this is indeed her intention, she is directed to do so, in writing, forthwith. The parties are summoned to a hearing to inquire into the status of the defendant's representation on Tuesday, July 16, 1996, at 2:00

PM before the Honorable Kennard P. Foster, Magistrate Judge, in Room 270, U.S. Courthouse, Indianapolis, Indiana. Should replacement counsel appear for the defendant, that hearing will be vacated.

Pursuant to 18 USC 3161 (h)(8)(B)(iv), the Court finds that the ends of justice served by granting this continuance to permit the defendant to obtain counsel outweigh the best interest of the public and the defendant in a speedy trial, and Orders that the period of delay form this date to July 31, 1996, shall be excluded in computing the time within which the trial of this offense must commence.

It is so ordered this 9th day of July, 1996.

Sarah Evans Barker, Chief Judge

United States District Court

Southern District of Indiana

Copy to:
Marsha Massey, 500 U.S. Courthouse, Indianapolis, IN 46204
Linda Thompson, 3850 S. Emerson Avenue, Indianapolis, IN 46203
U.S. Marshal, U.S. courthouse, Indianapolis,IN 46204
U.S. Probation, U.S. Courthouse, Indianapolis, IN

46204
Attn: David L. Baas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA
PLAINTIFF
V.S.
CAUSE NO. NA 96-6-CR

INDIANAPOLIS, INDIANA
AREL B. HAWKINS JULY 31, 1996
DEFENDANT 9:40 AM

TRANSCRIPT OF PROCEEDINGS AT TRIAL
AND SENTENCING
BEFORE THE
HONORABLE SARAH EVANS BARKER

APPEARANCES:

FOR THE PLAINTIFF: MARSHA C. MASSEY, AUSA
DONNA R. EIDE, AUSA
5TH FLOOR
U.S. COURTHOUSE
INDIANAPOLIS, IN 46204

FOR DEFT HAWKINS: JAMES W. BRADFORD
ONE VIRGINIA AVE
SUITE 500
INDPLS, IN 46204

COURT REPORTER: D.R. OESTEREICH
218 U.S. COURTHOUSE
INDIANAPOLIS, IN 46204

MACHINE SHORTHAND/COMPUTER
TRANSCRIPT

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PLAINTIFFS WITNESS

	DX	CX	RD
RC RRD RRC			
BRIAN ALDRIDGE	8	15	15
LARRY DILLARD	17		
CLARENCE SWITZER	20	25	
JOHN KEMPLE	27		

GOVERNMENT'S EXHIBITS:

NO.	MRKD.	ADM.
2		10
2A		12
6		24
7		30

DEFENDANTS EXHIBITS:

NO.	MRKD.	ADM.
B		38

The Court: Good among. Morning, counsel.

Mr. Bradford: Morning.
Miss Massey: Morning.
The Court: Mrs. Williamson, call the matter before the court.
The Clerk: United States of America versus Arel B. Hawkins, cause number NA96-6-CR.
The Court: All right.

This matter is on the court's calendar for a criminal trial on the information that was filed on May 8, 1996, charging Mr. Hawkins with the offense of criminal contempt, in that he is alleged to have been willfully disobeying, resisting and disregarding a lawful order of the court that was issued by Judge Dillin on April 29, 1996. Are you ready to proceed to trial, Mr. Bradford?

Mr. Bradford: Yes, your Honor.
The Court: And is the government ready?
Miss Massey: Yes, your Honor.
The Court: All right. Do you wish to make opening statements?
Miss Massey: I would, your Honor, but first there are a couple of preliminary matters that I would like to address to the court.
The Court: You may rise.
Miss Massey: First I'd like to introduce the people I have here at counsel table with me. Miss Eide I believe you know already.
The Court: I do know Miss Eide.
Miss Massey: You may not know, however, Deborah Richards. She is a paralegal in our office,

and also a second-year law student at IUPUI.
The Court: Good Morning, Miss Richards, Nice to have you here.
Miss Massey: Secondly, judge, I believe I filed a motion inlimine prior to Mr. Bradford's appointment or retention in this case. And one of the motions in limine was asking the court to take judicial notice of the court file for the foreclosure action which gave rise to this criminal contempt proceeding.
The Court: The court is presumed to know its files, but I will take judicial notice of that file specifically.
Miss Massey: And may I approach the bench?
The Court: You may.
Miss Massey: Copy for the judge. I have given --
The Court: Those are exhibits?
Miss Massey: Yes, judge. And I would like to draw the court's attention, Exhibit 1 is the judgment and decree of foreclosure--
The Court: Are they form the prior trial?
Miss Massey: They are indeed. All except for Exhibit 2, which will be introduced through our first witness.
The Court: All right.
Miss Massey: Exhibit 3 is the court's order to show cause that was issued-or excuse me, the writ of ejectment that was issued in March. Exhibit 4 is the order to show cause. And Exhibit 5 is a brief excerpt of the transcript from the April 29th, 1996 hearing before Judge Dillin.

The Court: All right.

Miss Massey: And then Exhibits 6 & 7 actually pertain to my second motion in limine, and that is, since we have the witnesses here today, if the court is so inclined I would like to have witnesses give testimony regarding issues that might re relevant at sentencing rather than have them come back up for a separate sentencing hearing, if that's to the court's --

The Court: Any objection to that, Mr. Bradford?
Mr. Bradford: No. Ma'am.
The Court: all right. We will treat it in that fashion.
Miss Massey: Okay. Very well then, judge, I believe we are ready to proceed.
The Court: Miss Massey, do you care to make an opening statement?

OPENING STATEMENTS TO THE COURT

Miss Massey: Just a brief one, your Honor. May it please the court. Mr. Bradford. In order for the United States to prove the defendant, Arel Hawkins, is quilty of criminal contempt, we must prove three elements:

The first one is that a lawful and reasonably specific order was entered by the court;

Two, that the defendant knew about the order;

And three, that he willfully violated theat order.

In this case the evidence will show clearly beyond a reasonable doubt that Mr. Hawkins is guilty of criminal contempt.

Basically we are here today because on April

29, 1996, Judge Dillin ordered Mr. Hawkins to vacate his farm, which had been foreclosed. Mr Hawkins, however, defiantly and willfully violated Judge Dillin's order.

However, Mr. Hawkins' defiance of the court really began much earlier. A judgment and decree of foreclosure was entered in August of 1995. Pursuant to that judgment and decree of foreclosure, a marshal's sale was held in December of 1995. And there were purchasers of what we will refer to here as the Hawkins farm.

After the marshal's sale was completed, the United States Marshals Service sent Mr. Hawkins a letter asking him to remove himself and his belongings from the property no later than February 28th of 1996. Mr. Hawkins, however, ignored that letter.

So on March 28, 1996, the district court got involved, and it issued a writ of ejectment, directly ordering Mr. Hawkins to get off the property and to remove his belongings. Mr. Hawkins, however, ignored that order as well.

And so on April 29, 1996, Judge Dillin held a show-cause hearing, for Mr. Hawkins to show cause why he should not be held in contempt for violating the court's writ of ejectment issued in March. At that hearing Judge Dillin unequivocally and directly told Mr. Hawkins to get off the farm. As an accommodation, he gave him until the end of the week. IN fact he noted that it was raining that day and said, "You can have until the end of the week to move."

Mr. Hawkins, however, continued to refuse

to move. And that's why we're here today.

And in fact on May 6, 1996, after a bench warrant had been issued, Sheriff Clarence Switzer of Orange County arrested Mr. Hawkins--where? On the farm that he had been ordered to leave. And then, because the defendant willfully disobeyed the order and refused to remove his property, the purchasers of the Hawkins farm were forced to do so.

So we ask the court that, after hearing all the evidence, that your Honor render a verdict of guilty in the matter.

The Court: all right. Mr. Bradford, do you have an opening statement?

Mr. Bradford: The defendant would waive opening statement, your Honor.

Miss Massey: All right.

Miss Massey, call you first witness.

PLAINTIFF'S CASE IN CHIEF

Miss Massey: The United States calls Deputy Marshal Brian Aldridge to the stand.

BRIAN ALDRIDGE, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

BY MISS MASSEY:

Q Good morning.

A Good morning, Miss Massey.

Q Would you please state your name for the record and spell your last name for the court

reporter?
A Brian Aldridge. A-L-D-R-I-D-G-E.
Q Deputy Aldridge, what's your occupation?
A I am a deputy United States Marshal, assigned to the Indianapolis Division in the Southern District of Indiana.
Q About how long have you been a marshal, deputy marshal?
A Since February 1985.
Q Now during your employment as a deputy marshal here in the Southern District, have you had occasion to become involved in a foreclosure action against the defendant in this matter, Arel B. Hawkins?
A I have.
Q How did you become involved in that case?
A In the normal course of the business in our office I was assigned to conduct a foreclosure sale at Paoli, Indiana on December 8, 1995.
Q After the marshal's sale did your office correspond with Mr. Hawkins regarding what he should do now that the foreclosure sale had been completed?
A Yes, we did.
Miss Massey: May I approach the witness, your Honor?
The Court: You may.
BY MISS MASSEY:
Q Deputy Aldridge, I'm showing you what has been previously marked as Government's Exhibit 2 for identification. Do you recognize that document?
A Yes.
Q What is it?

A It's a document that in the normal course of business our office utilizes when people do not vacate the property that's been sold.
Q And do you recognize the signature at the bottom?
A I do.
Q Whose signature is that?
A Frank J. Anderson, United States Marshal, Southern District of Indiana.
Q And how do you recognize that signature?
A All the correspondence in the Marshal's office in this district is done through his name. I have seen that thousands of times.
Q Is this letter in the same or substantially the same condition as it was when it was sent to the defendant, Mr. Hawkins?
A It is.
Miss Massey: Your Honor, I move that Government's Exhibit 2 be admitted into evidence.
The Court: Any objection, Mr. Bradford?
Mr. Bradford: No objection.
The Court: Exhibit 2 is admitted.
(Government's Exhibit 2 is admitted in evidence.)
BY MISS MASSEY:

Q I am now going to show you, Deputy Aldridge, what's previously marked as Exhibit 2a for identification. Do you recognize that copy?
A Yes, I do.
Q And can you tell us what that is exactly?
A This is a postal form, PS form 3811. It's a certified receipt form. It's a little green card. This

is a photocopy. This document is sent along with a letter and is to be returned upon service by the post office. In this case it appears that it was served on a person named Arel B. Hawkins.

Q And why would you say that?

A It has a signature on it of Arel B. Hawkins.

Q Do you recognize this particular Exhibit 2a?

A Yes. I was involved in the discussion to have this document sent certified mail, Exhibit Number 2. And I have specific knowledge that our office did send that letter certified mail.

Q And was this return receipt received in your office in response to this letter that you sent out?

A Yes, it was.

Miss Massey: I move Exhibit 2a into evidence.

The Court: You have had him identify a copy, but in the document you have provided me I have the original, as it appears.

Miss Massey: Yes.

The Court: don't you want to authenticate – that?

Miss Massey: Yes.

The Court: That's the exhibit that I will be receiving into evidence.

BY MISS MASSEY:

Q Now all that testimony you have just given us, Deputy Marshal Aldridge, is this the original concerning the copy that you have just identified and discussed with the court:?

A The copy I testified from is a copy of this original here.

Q And this original is Exhibit 2a?

A That's correct.

The Court: Any objection to Exhibit 2a?

Mr. Bradford: none.

The Court: Exhibit 2a is admitted.

(Government's Exhibit 2a is admitted in evidence.)

BY MISS MASSEY:

Q I think we touched on it, but if you would, could you please discuss with us what the purpose of the letter we just admitted into evidence was?

A The Marshals Service standard procedure upon selling a foreclosed property, if we receive notice that the individual or persons have not vacated the property after the sale we customarily send them a notice giving the residents approximately thirty days to vacate the property. It's kind of a second notice to them.

Q And did the letter specifically--

Mr. Bradford: Pardon me--Your honor, my client has a slight hearing problem. If you could tell the witness to speak up.

The Court: You'll have to keep your voice up, Mr. Aldridge.

Do you want the last answer repeated?

Mr. Bradford: no.

The Court: Exhibit 2 gives the defendant thirty days to comply; is that it?

The Witness: Yes, your honor.

The Court: okay. Next question.

BY MISS MASSEY

Q Deputy Aldridge, did that letter specify that he was to move by February 28, 1996?
A Yes, it did.
Q To your knowledge did Mr. Hawkins move by February 28, 1996?
A No, he did not.
Q Did you attend the April 29, 1996, hearing held in this courthouse before Judge Dillin?
A I did.
Q Was Mr. Hawkins present at that hearing?
A He was.
Q At this time could you please point to him and identify him by what he is wearing if you see him here in the courtroom?
A Mr. Hawkins is sitting at defense counsel table, and Mr. Hawkins has on a blue, gray, and white open-collar shirt.

Miss Massey: Your Honor, may the record reflect that the witness has identified the defendant?

The Court: The record so reflects.

BY MISS MASSEY:
Q At that hearing on April 29, 1996, did Judge Dillin state the following? I'm going to be reading from Exhibit 5, at the bottom the page, line 24. And I will quote.

"But I will once again order you in person that you and Mrs. Hawkins are to leave that land forthwith. And "forwith means--well, it really means today. It is a rainy day. I will give you until the end of the week. And if you are not gone by the end of the week, I can assure you that you will be punished for contempt. That will be all."

A Yes, I specifically remember that.
Q Did Mr. Hawkins at the hearing appear to be paying attention when the judge issued that order from the bench?
A Yes.
Q Deputy Marshal Aldridge, is the property formerly known as the Hawkins farm in Paoli, Indiana, located within the Southern District of Indiana?
A Yes, it is?
Q Did the April 29, 1996 hearing in Judge Dillin's courtroom take place within the Southern District of Indiana?
A It did.
Miss Massey: I have no further questions.
The Court: Cross-examine, Mr. Bradford?
Mr. Bradford: Just briefly, your Honor.

– CROSS-EXAMINATION

BY MR. BRADFORD:
Q Your testified about attending the hearing in Judge Dillin's court, where the judge verbally entered, made an order ordering Mr. Hawkins from the real estate in question, giving him until the end of the week. Now this was on an April 29th, 1996 date, was it not?
A That's correct.
Q Was that a Monday?
A My recollection is, it probably was.
Q What did that order mean to you?
Miss Massey: Objection. That calls for this witness's interpretation, which isn't really relevant to this trial.
The Court: Sustained.

Mr. Bradford: I have no further questions.

The Court: Redirect?

Miss Massey: Excuse me, your Honor. This is actually ommitted direct.

The Court: All right.

REDIRECT EXAMINATION

BY MISS MASSEY:

Q During your dealings with the defendant, at any time did he make any statements to you regarding whether he was going to vacate the property?

A Yes.

Q What did he say to you?

The Court: And when? First tell us when. When and where did you have a conversation with him, and then tell me what he said.

A On I believe it was April 24th, 1996, I went to Paoli, Indiana and delivered a document that was an order to show cause to Mr. Hawkins.

BY MISS MASSEY:

Q Did you personally serve that on Mr. Hawkins?

A Yes. Upon serving that document I asked Mr. Hawkins if he was still residing on property. He answered that he was. I asked him if he planned on leaving the property. And in a roundabout way he tod me no. He just simply said, "we'll see"--

Mr. Bradford: Now, your Honor, I'll move to strike that part of the answer, that starts "in a roundabout way", and ask the witness to simply testify as to what was said.

The Court: Sustained. Just say what he said as best you can recall.

A I do not remember his specific statement, how he phrased that he was not going to leave.

Miss Massey: Thank you. I have no further questions.

Mr. Bradford: No questions.

The Court: You may step down.

(The witness was excused.)

The Court: Call your next witness, please.

Miss Massey: At this time, your Honor, the government calls Larry Dillard to the stand. I believe he is on his way into the courtroom.

The Court: Spell his last name.

Miss Massey: It's D-I-L-L-A-R-D.

The Court: Say it again.

Miss Massey: D-I-L-L-A-R-D

The Court: Mr. Dillard, come to the witness stand, please, around the well of the court there. Miss Massey, you're slowing him down.

Miss Massey: Sorry, your Honor.

LARRY DILLARD, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

BY MISS MASSEY:

Q Good morning.

A Good morning.

Q Would you please state your name for the record?

A Larry dillard.

Q Mr. Dillard, where do you live?

A Route 2 Paoli.

Q And that's Paoli, Indiana?

A Uh-huh.

Q Where do you work?

A For bill and Connie Jenkins.
Q And what kind of business do they have?
A Farm.
Q Is that in Paoli, Indiana?
A Yeah.
Q And can you tell me where, and the court as well, where that farm is in relation to the Hawkins farm?
A It adjoins it.
Q Mr. Dillard, on Thrusday, May 2nd of '96 did you speak about Mr. Hawkins?
A Yes.
Q And where that take place?
A It ws over at the feedlot.
Q Did he tell you anthing regarding whether he was going to leave his farm?
A He said that he was going to rent a house for his wife and kids, but he was going to stay there at the property.
Q Mr. Dillard, do you see Arel Hawkins in the courtroom today?
A Yes. .
Q Would you please point to him and describe what he's wearing?
A Looks like he's got a blue striped shirt on.

Miss Massey: Nay the record reflect that the witness has identified the defendant?

The Court: The record so reflects.

Miss Massey: May I Have a moment to confer? I have no further questions.

The Court: Was the feedlot on your farm or his farm?

The Witness: It was on the Bill and Connie

Jenkins place.

The Court: Okay. On the Jenkins property?

The Witness: Uh-huh.

The Court: Cross-examine?

Mr. Bradford: No questions.

The Court: All right. Mr. Dillard, thank you very much.

Watch you step there as you leave. Do you need help?

Witness: No.

(The witness was excused.)

Miss Massey: The government calls Sheriff Clarence Switzer to the stand.

The Court: Sheriff, come to the witness stand, please. Come over this way so yo won't get tripped up in the reporter's stuff.

CLARENCE SWITZER, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

BY MISS MASSEY:

Q Sheriff, would you please state your name and spell your last name for the court reporter?

A Clarence Switzer. S-W-I-T-Z-E-R

Q And what's your occupation?

A Sheriff, Orange County.

Q How long have you been sheriff of Orange County?

A This is my fourth term. I was elected--I took office in 1975, through '82, and I started again on my third termin '91, up to the present.

Q Sheriff Switzer, do you know a man named Arel or Bud Hawkins?

A Yes, I do, ma'am.
Q Do you see him here in the courtroom today?
A Yes, I do.
Q Could you please point to him and describe what he's wearing?
A Right there, on the left.
Q And what is he wearingk so the court reporter can--
A Looks like a plaid shirt, blue.
Miss Massey: may the record reflect that the witness identified the defendant?
The Court; The record so reflects.
BY MISS MASSEY:
Q Sheriff Switzer, did there come a time on May 6, 1996, when you arrested Mr. Hawkins?
A Yes, ma'am, there was.
Q And what prompted his arrest?
A I had a federal marshal passed me a warrant, and I went out and arrested him on the federal warrant.
Q And prior to his arrest did Mr. Hawkins say anything to you about the possibility of his being arrested?
A Approximately a week before he'd--the warrant was sent to me, he indicated to me that there would be a federal warrant come down, and if I would get him there would be no problem. And I told him if one come down I would be the man to come and get him.
Q Did he tell you what would happen if you weren't the one to come down?
A He just told me that --he just told me that

there wasn't going to be no problem if I came; if the federal marshal come there may be.

Q Where did you arrest Mr. Hawkins?

A At his residence.

Q And owuld that be the residence that was--

A On 150 East, Paoli, approximately two and a half miles east of Paoli.

Miss Massey: Your Honor, this witness also has evidence concerning conduct which might be relevant for sentence.

The Court: You may ask.

BY MISS MASSEY:

Q As sheriff of Orange County do you sometimes receive verbal complaints about individuals in the community?

A Yes, I do.

Q Have you received a verbal complaint or report regarding Mr. Hawkins?

A I have. I have had one telephone conversation. One, yes.

Q And could you tell us what that conversation was about?

A It was--Philip Bosley had called me by phone, indicating that Buddy had made two or three trips by him, and he was expecting problems. And I told him if he was to call me and I would care of it.

Q And you just made reference to Buddy. Is that Mr. Hawkins?

A Yes, right.

Q Sheriff, did there also come a time when Mr. Hawkins himself came into your office and filed a written complaint?

A Yes; he come in, and my chief deputy took

the written complain, yes.

Miss Massey: May I approach the witness?

The Court: You may.

BY MISS MASSEY

Q And also I show--

Miss massey: Show it to Mr. Bradford.

The Court: This is an exhibit from your packet.

Mr. Bradford: Oh.

BY MISS MASSEY

Q And also, Sheriff Switzer, do you recall approximately when a conversation took place with Mr. Bosley?

A No, ma'am, I don't. Seems to me like it was some time in the afternoon, but I couldn't attest to what time it was.

The Court: Was it this year?

The Witness: Yes, ma'am. It was after the arrest had been made. There was out there, working on the property?

The Court: Now what exhibit did you gibve him?

Miss Massey: Exhibit 6. It's in the court's packet.

A Okay, this is a Orange County Sheriff's department case report.

BY MISS MASSEY:

Q Are you familiar with that tuype of a report?

A Yes, I am.

Q And how re your familiar with that report?

A It is our report. And officer, Chief Moffatt, M-O-F-F-A-T-T, is the one made this report.

Q And as sheriff would you have knowledge of

the people who come in and make reports?
A Sure. I usually look over the case reports.
Q So would it be fair to say that you're familiar with that report?
A Yes, I am.
Q And is that report in the same or substantially the same condition as it was in when it was filed in your office?
A Yes, ma'am.
Miss Massey: Your Honor, at this time I would move that Exhibit 6 be admitted into evidence.
The Court: Any objections?
Mr. Bradford: None.
The Court: Exhibit 6 is admitted.
(Government's Exhibit 6 is admitted in evidence.)
BY MISS MASSEY:
Q If you would, I am going to hand you back Exhibit 6. Who made that report, Sheriff Switzer?
A Chief David Moffatt.
Q And who was the complainant, or the complaining party?
A Mr. Hawkins
Q And what was Mr. Hawkins complaining about?
A Alleged theft on -- at his property. If you want I could read what it says here.
Q Was this alleged theft supposed to have taken place at the property that was the subject of the foreclosure?
A Yes, ma'am.
Q And when was that report filed?

A It was filed 6/4/96 at 3:00 P.M.

Miss Massey: Thank you. Moment to confer, judge?

The court: Yes.

Miss Massey: No further questions.

The court: Cross-examine?

Mr. Bradford: yes, your Honor.

The court: give the exhibit back, if you would, sir.

CROSS EXAMINATION

BY MR. BRADFORD:

Q Sheriff, how long have you been a resident of Orange County?

A All my life.

Q How long; do you know?

A Fifty-eight years.

Q How long have you known Arel Hawkins?

A Ever since I have been in law enforcement, back in, oh--Back in '62 is when I started in law enforcement. I would say the past twenty-five years.

Q What's he normally done for a living?

A Farmed.

Q All right. What's his reputation for being a law-abiding citizen in Orange County?

A He's never been in no type trouble.

Q As far as you know he is all right; is that right?

A Never arrested that I know of. Other than this.

Q Now you testified that about a week before May 6, 19996--that's when you arrested him--

A Yes, sir.

Q --Mr. Hawkins had a conversation with you that you would probably get a warrant?

A He came in and talked my dispatcher, and advised her that they would probably be a federal warrant come--

Q He didn't talk to you?

A Not at that time. I did talk to him on the phone at that time.

Q All right.

A And he indicated that they would be a, probably be a federal warrant down, and indicated that if I were to come and get him there would be no problem.

Q Could you swear that that conversation took place after April 29 or before April 29?

A I would say probably after.

Mr. Bradford: Thank you. No further questions, your Honor.

The Court: Redirect?

Miss Massey: None, your Honor.

The Court: You may step down, sir.

The Witness: Thank you, your Honor.

The court: Thakn you very much.

The Witness: Am I free to go?

Miss Massey: Yes.

(The witness was excused.)

Miss Massey: At this time the United States calls as its last witness John Kemple.

The Court: Spell Kemple.

Miss Massey: I believe it's K-E-M-P-L-E.

JOHN KEMPLE, PLAINTIFFS WITNESS;

SWORN

DIRECT EXAMINATION

BY MISS MASSEY:
Q Good Morning.
A Morning
Q Would you please state your name for the record and spell your last name for the court reporter?
A John Kemple. K-E-M-P-L-E
Q Mr. Kemple, whre do you live?
A In Paoli, Indiana.
Q Do you know a man named Arel or Bud Hawkins?
A Yes, ma'am, I do.
Q Do you see him in the courtroom here today?
A Yes, ma'am, I do.
Q Could ou please point to him and describe what he is wearing?
A He is sitting right back there. He has on what appears to be a blue and a gray or khaki shirt on.

Miss Massey: May the record reflect that he has identified the defendant?

The Court: The record reflects.
BY MISS MASSEY:
Q Mr. Kemple, how do you know the defendant, Mr. Hawkins?
A I lived as a neighbor with Mr. Hawkins for, since approximately 1964, '65.
Q Did there come a time on May 7, 1996 that you happened to be on the farm property known as the Hawkins frm?
A Yes, ma'am.
Q Could you please describe for the court what

you saw when you were out on the farm property on May 7?

A At that time I saw Jerry Gettlefinger and another gentleman from his agency removing some of Mr. Hawkin's equipment.

Miss Massey: Now this witness also has evidence regarding conduct which would be relevant to the sentence.

The Court: Is that why you're going to ask about removing something from the property--

Miss Massey: Yes.

The Court: --on May 7? Better get him to say something more than that. What kind of property?

Miss Massey: I believe the witness testified it was farm equipment that belonged to Mr. Hawkins.

The court: He didn't say tha.

The Witness: yes.

BY MISS MASSEY:

Q Would you plese describe to the court, then--

A It was farm equipment, tractor--There was plows, disks--

The Court: okay.

A --things like that.

The Court: I was just hearing defendant's property.

Miss Massey: I am sorry, judge. May I approach the witness?

The Court: Yes.

BY MISS MASSEY:

Q I am going to show you what been previously marked as Government's Exhibit

Number 7 for identification. Do you recognize that document?

A Yes, I do.

Q Can you please tell us what it is?

A This is a statement that I gave to the Orange County Sheriff's department after being in a local restaurant there in Paoli, and Mr. Hawkins was coming--I was setting in the restaurant and Mr. Hawkins was coming into the restaurant, and through the window glass there it appeared to me he cursed at me through the window glass.

The Court: Keep you voice up now.

BY MISS MASSEY:

Q What else did Mr. Hawkins do?

A Came into the--He was gritting his teeth outwide of the restaurant; he came in set down in the restaurant facing me, and was setting htere, and you could tell he was very upset and gritting his teeth.

Q And is it that behavior what prompted you to file this report?

A Yes, it is.

Q Is that your signature on the report?

A Yes, ma'am it is.

Q Is this report in the same or substantially the same condition as it was in when you filed it, or a copy?

A Yes, it is.

Miss Massey: Your Honor, at this time I will move the that Government's Exhibit 7 be admitted in evident.

Mr. Bradford: No objection.

The Court: Exhibit 7 is admitted.

(Government's Exhibit 7 is admitted in evidence.)

Miss Massey: May I've moment to confer? I have nothing further at this time.

The Court: Cross-examine?

Mr. Bradford: No questions.

The Court: Mr. Kemple, thank you very much. You may step down.

(The witness was excused.)

The Court: Miss Masseu?

Miss Massey: Government rests, your Honor.

The Court: Mr. Bradford?

MOTION BY MR. BRADFORD

Mr. Bradford: If I may, your Honor, I have a motion.

The court: All right.

Mr. Bradford: Pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure, the defendant would move for judgment of acquittal, for the following reasons:

The offense charged herin in the information, the charging paragraph may be found under paragraph 8 of the information. It charges Mr. hawkins substantially with willfully disobeying, resisting, and disregarding a lawful order of the court, to-wit the order entered April 29th, 1996 to vacate the real estate.

The evidence entered by exhibit shows, in the last pages of Judge Dillin's transcript and the entry of April 29th, 1996 in writing, that the court allowed the defendant till the ned of week to vacate the property. The hearing was held on April 29th,

1996. There is no evidence that Mr. Hawkins was ever served with a copy of that order. He was present when Judge Dillin orally made such comments. But what does giving you to the end of the week to vacate property mean?

In the prosecutions under this section,your Honor, the courts have consistently held that contempt will not lie for a violation or an order of the court unless the order is clear and decisive, and contained no doubt about it, which requires what is to be done. That's NLRB versus Deena hardware Inc., Sixth Circuit, 1958, 261 F.2d 503; reversed on other grounds, 80 Supreme Court 441.

That line of thinking was also sustained by the court in the Matter of LaMarre. That is 494 F.2d 753 at page 1974.

And that case cites the--one of the watershed cases on contempt, being United States versus Green, 1958, 78 Supreme Court 632.

The defendant was arrested on May 6, which would have been one week from the date of Judge Dillin's hearing and entry. Are we to guess what date he was to vacate this property? Until the end of the week; what does that mean?

The defendant would respectfully submit to the court that the order is not one under which criminal sanctions can be imposed, as it lacks certainty as to what should be done and on what date.

Further, there is a lack of any evidence of service on the written entry on the defendant. Even though he was present when he was substantially told orally by Judge Dillin the same thing as

contained in the entry on April 29, 1996. Thank you.

The Court: Thank you, Mr. Bradford. Miss Massey?

Miss Massey: Yes, your Honor. First I'd like to refer the court and counsel--

The Court: Come to the podium, please. Make your argument there, so I can hear you.

Miss Massey: I'm sorry judge. I was on my way; I jumped the gun a little bit there. I'd like to refer the court and counsel to the Government's Exhibit Number 3, in the packet, which is the court's writ of ejectment.

I you refer to bottom of that document, it states, in all capital letters.

"You and any other persons residing on the real property are therefore commanded by this court to vacate the real property foreclosed upon in this action, surrender hte personal property foreclosed upon in this action to Farmers Home Administration, and remove all personal possessions located on the property within five days upon receipt of this writ"

This writ was entered on March 28, 1996. And because mr. Hawkins willfully refused to obey this writ, the court had its hearing on April 29th, 1996, for him show cause why he should not be held in contempt the court.

Now, if the court would then refer to Exhibit 5, which is the transcript excerpt, beginning amount line 24, the court begins:

"But I will once again order you in person that you and Mrs. Hawkins are to leave that land

forthwith."

Now, when the judge says he will give Mr. Hawkins until the end of the week, I did provide the court and opposing counsel a copy of the calendar inside the folder there. The hearing took place on Maonday, April 29th. Now, if one is to construe "until the end of the week" as until Friday, that would be May 3rd. If one is to construe the language "until the end of the week" to be until Sunday, that would be May 5th. Mr. Hawkins was arrested May 6 on the property which had been foreclosed.

There is no lack of specificity in this court's order. Judge Dillin bent over backwards to convey to Mr. Hawkins that he needed to leave the property. He simply didn't want to do to so.

So we would contend that we have more than proven oru case beyond a reasonable doubt. And taking all the evidence in the light more favorable to the government, a reasonable jury could certainly find that Mr. Hawkins is guilty of criminal contempt.

The Court: I assume you mean a reasonable jurist.

Miss Massey: Excuse me, yes.

The Court: Rebuttal?

Mr. Bradford: A short response, your Honor. I di not quite understand part of the argument as to the writ of ejectment, et cetera. The only charge that Mr. Hawkins is here on today is willful disobedience of a court order on April 29, 1996. The other matters alleged in the information are mere surplusage. If they meant to charge an offense

there, we have a duplicitous information. This is a criminal trial. We are not on preponderance of the evidence. Or we are on reasonable doubt, beyond a reasonable doubt.

It is the defendant's contention that the orer by Judge Dillin is not certain in its terms as to the time to vacate, and therefore this prosecution must fail. Thank you.

The Court: The information references the willful disobeying, resisting, and disregarding of a lawful order of the court, to-wit the order issued in open court on April 29, 1996 to vacate certain specified real estate as set out in the March 28, 1996 writ of ejectment entered in the civil cause.

So there is no confusion as to what has been alleged here. And we have to look to the order that Judge Dillin entered in order to determine its nature, and more specifically its specificity.

That order, by incorporating the writ of ejectment, makes it absolutely clear what is required of the defendant in terms of his own actions. That is to say, he is to get out of the property, he is to vacate the property.

The only basis for any argument is that there may be some confusion as to time. But I find that that's not confusion either, because "by the end of the week" has a clear meaning to a normal hearer of those words, particularly since that hearing was held on the 29th, which was a Monday. The reasonable interpretation would be the rest of that work week to get it done.

Even if you incorporated the weekend as the time for compliance wiht the order, so that you said,

Miss Massey: May it please the court.

The Court: Miss Massey.

Miss Massey: Mr. Bradford. As I mentioned at the beginning of this hearing, the government needed to prove three elements beyond a reasonable doubt in order for the court to find Mr. Hawkins guilty from of criminal contempt.

The first element is that there was a lawful and reasonably specific order entered by the court. And as you noted just a few mintues ago, the order that Judge Dillin gave Mr. hawkins was quite specific, particularly in light of the court's writ of ejectment which was initiated in march, specifically commanding Mr. Hawkins to vacate the property. So the government has satisfied the first element of offense.

The second element of the offense is that defendant knew about the order of the court. Clearly, once again, that evidence--that element cannot be in dispute. Mr. Hawkins was at the April 29th hearing, and Mr. Hawkins did receive service of the writ of ejectment that was served upon him in march via certified mail, and a return receipt is actually part of the court file which you have judicially noticed.

The third element is that the defendant willfully violated that court order. And this court has certainly heard evidence regarding that element as well. Mr. Hawkins was actually arrested on the property after he had been ordered to move not once but twice by Judge Dillin, after he had received a letter from the Marshals Service requesting him to move, and after he had made statements to people in

his community that he wasn't going to move and that was it. So his willful disobedience cannot be a question in light of the evidence before the court today.

And as a result of his conduct, of his behavior of flouting the law, the United States requests and the evidence demands that he be found guilty of criminal contempt. Thank you.

Mr. Bradford?

Mr. Bradford: Thank you, your Honor. The defendant, if the court would permit, would simply readopt its argument made--his argument made at the conclusion of the government's evidence as his argument at the conclusion all of the evidence.

The Court: All right.

The court takes note of the holding in Doe versus Maywood Housing Authority, 71 F.3rd 1294, February 3rd, 1995, headnote 5 and 6, whre that court develops a discussion of the essential elements of a finding of criminal contempt under Title 18 United States Code Section 401(3).

That opinion cites United States versus KS&W Offshore Engineering, Inc. 932 F.2d 9906, and cites some other cases as well, which I'll not specify. It says that the essential elements of a finding of criminal contempt under the statute I just referenced are a lawful and reasonably specific order of the court, and a willful violation of that order. Dropping down in the text,it says,

"Although 401(3) does not require it, this court has held that willfullness is an element of criminal contempt and must be proved beyond a reasonable doubt. Willfulness is defined as a

volitional act done by one who knows or should reasonably be aware that his conduct is wrongful, and may be inferred from the facts and circumstances in proof."

That's the end of the quote from that case.

Taking those essential elements into account, I find that thre is evidence beyond a reasonable doubt to find Mr. Hawkins quilty of the offense of willfully violating the reasonably specific order of Judge Dillin that was handed down on April 29, 1996 form the bench and in court proceedings.

That order, as I've already commented in my earlier ruling, left nothing to the imaginaiton to what was required by the court of Mr. Hawkins. He was to vacate the property that had been previously been his farm and his residence pursuant to the lawful foreclosure and the lawful writ of ejectment. He was before hte court following an extensive hearing at which these issues were discussed. He was ordered forthwith to vacate the premises but was given a certain grace period of that week to comply. And so "forthwith" has to be folded into the understanding of a reasonably specific order.

And when "the end of the week" was tagged on as a matter of grace by the court to allow what anyone would know would be a process that might consume considerable effort and at least a day or two to accomplish, Judge Dillin was being realistic and fair in that manner, but he was not being vague. He made it perfectly clear in his words as they are stated and recorded in the transcript that Mr. Hawkins' obligation under law and by virtue of the

order of the court was to get off the property immediately.

The defendant knew of the order; that's the gist of the entire hearing. It is evidence by the fact that he made statements to the sheriff to that effect. It was a statement that he made to the sheriff that he knew that a warrant would be issued, he was anticipating the warrant would be issued, and if the sheriff came to execute the warrant there would be no problem. So he knew perfectly clearly what was happening.

The certified mail document also evidences his signature, which shows taht he received that writ of ejectment and he knew what the court had put in play in terms of his vacating the premises zfter the foreclosure sale.

It's also obvious that his violation was willful. That is to say,knowing all of that he knew, he held his ground in unlawful disobedience of the order. He made arrangements, apparently, for his family to vacate the premises, but he willfully refused to, and in fact had to be arrested on the property when the arrest warrant finally issued.

So it wasn't by misunderstanding, by accident, by happenstanc; it was by a willful, volitional act that he decided that he was going to almost literally hold his ground.

And for those reasons, those elements being satisfied beyond a reasonable doubt, the court finds him guilty of the charge in the information against him.

The issue pertains now as to how to proceed from hear. There is some confusion about whether

the sentencing guidelines apply to a finding of guilt under this statute, and whether the matter ought to be disposed of by punishment imposed at this time. I will hear the parties on that matter.

Miss Massey: Your Honor, if I may refer court to Section 2J1.1 of the guidelines.

The court: 2J--

Miss Massey: 2J1.1.

The Court: Yes.

Miss Massey: The guidelines are a bit circular, but that section does pertain to contempt. And it basically says to apply 2X5.1.

So then if one flips to it 2X5.1--they can never say anything right on that particular page--that is the guideline for all other offenses. And because this is a petty offense, the United States is not seeking punishment of imprisonment of more than six months, it would mean that the provisions of 18 USC Section 3553 sub B, control according to the guidelines.

The Court: There is a May 24th, 1996 decision, in United States of America versus Ortiz and others. Have your looked at that?

Miss Massey: yes.

The Court: Does that conform to your analysis that you just outlined?

Miss Massey: It does, your Honor. Since this is a petty offense, and the guidelines aren't really designed to deal with those types offenses, since the guideline for contempt specifically ultimately references Section 3553, and its factors contained in subpart 2--excuse me, B--

The Court: What portion of 3553 are you

citing?

Miss Massey: May I approach, your Honor? Or--

The Court: Well, I have the statute. What--

Miss Massey: Okay.

The guideline specifically states that

"If the offense is a felony or Class A misdeameanor for which no guideline expressly has been promulgated, apply the most analogous guideline, the provisions of 18 USC Section 3553 sub B shall control, except that any guidelines and policy statements that can be applied meaningfully in the absence of the chapter 2 offense guideline shall remain applicable."

So if the court turns to B, it then kind of, in circular fashion, refers you back to Section 3553-A4, and basically states that

"In the absence of an applicable sentencing guideline the court shall impose an appropriate sentence, having due rgard for the purposes set forth in subsecitonA2."

And in subsection A2 it lists factors that the court may weigh in determining an appropriate sentence. And if I might point out, in subsection 2, large A--I am sorry, I didn't mean to be confusing--it states that

"The need for the sentence imposed should reflect the seriousness of the offense"---

--and most importantly in this case--

--"to promote respect for the law, and to provide just punishment for the offense."

The Court: All right. Is it your proposal that I provice forthwith with the sentence?

Miss Massey: It is, your Honor.

The Court: Mr. Bradford,do you have a view on that matter?

Mr. Bradford: I have no objection.

The Court: All right. And the statutory limit is fine of a thousand dollars and up to six months of imprisonment; is that right?

Miss Massey: Yes, your Honor.

The Court: All right. Mr. Bradford, bring Mr. hawkins there to the podium, please.

Mr. Hawkins, having made the decision that you are guilty of the charge against you in this information, it is now my obligation to impose appropriate punishment in the form of a sentence, as is required under the applicable law.

The possible maximum penalty--that is to say, the penalty set by the statute--is a period of incarceration of up to six months and a fine of up to a thousand dollars. Those are the maximum penalties that the court can impose, and above which no lawfully imposed sentence could be set.

Mr. Bradford has indicated that you are ready to proceed to receive the punishment at this time, and it's appropriate for you to address the court and tell me whatever it is that you want to have me take into account in fashioning a sentence in this particular case. I encourage you to use this opportunity, because once sentence is imposed we can't come back and do it again; it's a settled matter. You will be required to comply with the order of the court that's imposed.

So is thre anything you'd like me to take into account or anything you'd like to say at this

time?

Defendant Hawkins: Well, I will say something. It may be I never should have, may aggravate the sentencing.

The Court: Well, you better check with Mr. Bradford, because you are bound by your standard of conduct in this proceeding as you were in all other proceedings.

(The defendant conferred privately with Mr. Bradford.)

The Court: You may proceed.

Defendant Hawkins; Your Honor, I wish this had never happened to Mr. Dillin's court or your court. But it did. Pardon me.

The Court: It happens a lot to people standing where you're standing.

Defendant Hawkins; Whatever you do to me today is nothing compared to what they did to me on May 6.

The Court: Compared to what?

Defendant Hawkins: To me, on May 6th.

The Court: What happened on May 6th.

Defendant Hawkins: Well, they took everything that I had, from forty years work.

The Court: That was the foreclosure?

Defendant Hawkins: (The defendant nodded.)

The Court: What are you doing now? Where are you living now, Mr. Hawkins?

Defendant Hawkins: Odd jobs.

The Court: Odd jobs? Where are you living?

Defendant Hawkins: Route 3. It's down the road about a mile. I can go ahead if you like.

BEST AVAILABLE COPY

The Court: Go ahead.

Defendant Hawkins: There was thirty head of cattleon the the farm, there was no lien on. Two of them cows belonged to my two oldest children. There was no account of where that money went' never been mailed to me, you know, what happened to it. And there was pieces of equipment that there was no lien on. There was lots of personal effects that was no lien, no legal lien. That was all taken.

And my boy had some goats, and they wasn't worth very much. Mr. Ronald Hess (phonetic), he took the goats to his place, and then sold them and kept the checks. He also knowed that my boy owned a cow. But that money wasn't sent. And my daughter owned a cow, and the money wasn't sent to her, 4-H cow.

I'm just trying to paint a picture so you can see what happened.

I had a thousand-gallon fuel tank on skids, and I had a eight-hundred-gallon fuel tank on skids. They both had five-hundred-dollar pumps on them. They didn't take--they took them tanks and gve the tanks to Danny Joe Kemple. He is a convicted felon. They didn't sell him the equipment; they gave them to him. There wasn't no money applied to the debt.

The Court: Say that again.

Defendant Hawkins: There was never no money applied to the debt.

The Court: Okay.

Defendant Hawkins: And they had the sale on--equipment sale two weeks go Saturday, I think. Yeah. I got no--no information on what it brought,

where the money went. You know, on the--kind of handled rough.

My brother had a mobile home on the farm, in him and my mother's name. They took it, and nobody knows whre it's at. My mobile home, I had the title, and they took it. Nobody knows where it's at, where it went to.

Pets was destroyed. I hate to use this--I know the plaintiff's views; they mix civil with with criminal here.

My counsel advised me not to say it, but I got to say a little bit of it.

This was land grant property. I begged Judge Dillin to, on April 29, to give me a statute that the federal court can use to give them jurisdiction on private property on a civil matter. He asked the clerk to come up with it, and couldn't find it. And I still don't, can't find it.

All right. I always thought that the highest court of the land would operate to the letter of the law. Maybe they have. But they have not shown it to me. I'm not laying blame on the court, but, you know, I'm kind of mixed up.

I explained this to Mr. Aldridge on April 24, the day he said that he gave me that criminal subpoena, in the civil case. And his reply was, he said, "In theory you cna win, but you are against the United States. You're beat." I guess he was coming pretty straight at me. There's questions still leading me on.

I could go on and on, but the court ain't--

Mr. Bradford: Will you shut up?

Defandant Hawkins: Okay. Like I said, it's-

The Court: Why didn't you leave the property when Judge Dillin told you to be off by the end of the week?

Defendant Hawkins: I had to challenge, I felt like--I had to call court's hand to show me that statute. I--Me and my wife talked it over. She said she would stay with me and go to jail with me, but she didn't want the State to take the kids away from us. So I had to sacrifice. No--meant no disrespect to this court or Judge Dillin's court, but somebody has to stand up and see that the country is running on line. And that's why.

The Court: Well, I was reviewing the transcript that was with the civil file in preparation for this hearing, and I didn't read it all because I didn't have time to read it all; I familiarized myself with the proceedings that had occurred on the 29th, when you appeared before Judge Dillin. And I was interested in Judge Dillin's remarks to you at the conclusion of the hearing.

Now I just want to read it back to you, because, you know, Judge Dillinh himself is a farmer, and he is an experienced person in all these ups and downs as wll as the pleasures of farming, and the pain as well. He told me recently, just as an aside, I will tell you that, with all the rain in the spring--

I don't know how much property he has; he says that a person shouldn't ask that of a farmer, that that's like asking how much money they have in the bank. I have neer asked him that, and I wouldn't ask him that.

But he said, I think as of June, he had only thirty-five acres planted. So I know he is having to live with the realities of the weather and all the other unpredictable factors with respect to farming.

So when I read what he said I heard it against that backdrop. Maybe you didn't know that about him that he had a special poignance to his understanding, that he's been there; he knows about that. He says:

"Well, the facts are"--and this is on page 35--

"that you and Mrs. Hawkins mortgaged your property, both of you in person, as previously stated, and as I believe you have admitted, you didn't pay what you owed when it was due. That is not a criticism. The court is well aware ofthe fact that farming has been a very chancy busines for many,many years. And the fact that you are unable to pay is just one of those things. Many other farmers have had the same experience and have similarly been foreclosed. The difference between you and all of the others is that they knew that they owed the money. Theuy knew that they hadn't paid it. They knew that their property was mortgaged. The knew that it would eventually be foreclosed and sold. And when it was they knew that they were supposed to leave the property, and did so."

"In the thirty-five years that I have been sitting on this bench"--

--Judge Dillin said--

--"you are the first person who has refused to leave the land after it has been sold. Therefore you are certainly in contempt of this court and its

orders. And I would be justified in fining you and perhaps giving you a few days in the county jail. However, I am not going to do that. That is, I am finding you in contempt, but I am not going to punish you today. Because it is obvious to me that you ahve been listening to some very foolish and very bad advice, very incorrect advice, and that you have elected to receive it as the Gospel in order to justify your staying on the land. So I am going to withhold any sentence at this time, but I will want to give you this order in perosn and then enter the other part we have talked about earlier."

Now in fact that hearing was the culmination of a whole case-and let me just hold up here the file-that culminated in the foreclosure. And if you had disagreements with the appropriateness of the foreclosure, if you thought that the sale ws going to reach property that should not have been encumbered by a lien or included in it, that's the time when you work out those things, with a lawyer representing you.

Now you had a lawyer, but that lawyer was apparently giving you bad advice. Or at least you weren't hearing the advice. But that's where these legal issues get hammered out.

And we're pretty far down the road at this point; we are into a second case that is a criminal case because you didn't do what you were ordered to in the first case. And if you didn't do what you were ordered to do in the first case because you had some legal dispute or whateve, by the time you appeared before Judge Dillin on the 29th all those issues were resolved; all of this was over and done.

So it's not correct, it's not right for you to say that you don't have to follow the order of the court because you have some lingering legal dispute. Those disputes get resolved in the course of the trial. So there is nothing about your being railroaded here; there's no way in which your rights were run roughshod over. You were treated like every other litigant who comes to court and has legal standing before the court.

You know, when we have jury trials we say to juries as a part of our legal instrucitons that all parties stand as equals before the bar of justice. And that's true for you, Mr. Hawkins, and it's true for the United States. And the United States doesn't have any greater standing before the court than you do. And if you have an legal argument to assert, the court would hear it and resolve it if it had any substance to it. But you just--These are courts of law; we don't make up things sitting up here. We look at the statutes, and we try to interpret them, see what's required.

And in fact the law of foreclosures is not complicated; it's pretty open and shut. And if you don't pay as you are required to pay by the agreement that you have, that you made voluntarily, on the money you borrowed, there is going to be a consequence. And so you can't stand there and blindly refuse to follow the court's orders at the tail end of the process, when all the legal issues have already been resolved. Not the not legal issues, but the substance. Or if it wasn't raised, that's not Judge Dillin's fault.

So that's how you've gotten where you are

today. Because you have just been pretty stubborn about it.

You can't continue, int he face of the law and what the law requires and how the procedures unfold, to pretend like you're bigger than anything else that is being brought to bear on you; you can't just fold your arms across your chest and say, "I won't do it." That's not how it happens.

Anybody who has paid attention to life in these United States for the last twenty years knows the agony that men like you have gone through when they basically have to lay everything on the line in order to stay in farming, and for reasons outside their control the props have come out from underneath. Nobody likes that. In fact it's heartrending. But we operate by a process of law: You borrowed the money on the mortgage, and now you are obligated to pay it back. And if your fortunes are such that you can't do that, then you have to give over the property, which was what you posted as security to get the loan. That's how it happens.

And it happened not just to you, Mr. Hawkins; it's happened to thousands of farmers all over the country. So you don't have to feel like you're being victimized by this.

Mr. Bradford, what would you say in Mr. Hawkins' behalf?

Mr. Bradford: I would just say this, your Honor: That this man is not a criminal. Judge dillin observed that and made that statement in his hearing on April 29th. Mr. Hawkins is a more acute harmed party, of someone who has his whole world come

apart, if you will, both financially and probably spiritually, because his farm, that farm had been in his family at least since his grandfather. And now he is waking up, and he is still in shock, I believe, you Honor, over the loss of that farm.

There is a deficience judgment of in excess of a million dollars. He is a man. He can't support his family. At least he feels he can't give them what he should be able to give them. He is ashamed.

I've observed in my practice of law that people who go through extreme financial problems sometimes act very irrationally compared to how they acted when everything was smooth; they literally lose all sense. I think it's been very difficult for this man to accept the fact he doesn't own that farm any more. He is going to have to. I think it's still difficult for him to understand that, the psychological impact has been so severe.

And, like may laymen, he doesn't understand the mechanics of law. When I first talked to him he was certain that something was wrong in his civil case because he didn't have a trial; it went off the way of the summary judgment. And I explained all that to Mr. Hawkins after I promised him, and I did, review the entire civil file. I told him it was completely all right. And I told him how these things happen. And he's just fought.

Now today he is acting, in my opinion, as a law-abiding citizen. He came in here, conducted himself, in my opinion, in a reasonable manner during this proceeding. And I don't think I have ever seen a defendant cloud up and almost cry like this man has this morning.

The government has informed me they do not seek incarceration, and they regard this as a petty offense. I would hope that the court would not imprison this man but show him some mercy and God's grace, that he will be the hardest man on himself that anyone can be. He will see the light. Thank you.

The Court: Thank you, Mr. Bradford. Miss Massey, what is the government's view? Stay there, please, gentlemen. Mr. Hawkins, stay there by Mr. Bradford.

Miss Massey: Would you like me to address the court from counsel table?

The Court: Where you are is fine.

Miss Massey: Okay. First I want to clarify with the court, we were not seeking jail time prior to trial. However, now that we have gone to trial that's not the case any longer.

In fact that United States recognizes that Mr. Hawkins has no prior criminal record, and a foreclosure is a difficult thing for people to go through. But people don't do what Arel Hawkins did; and they can't, or our system breaks down.

And his obstruction didn't just extend to disobeying court orders. After he had been placed in jail after the April 29th hearing--or excuse me--after the April 29 hearing he intimidated folks in the community. Sheriff Switzer talked about a telephone complaint he had received. Sheriff Switzer talked about how Mr. Hawkins had made statement to him there would be trouble if the United States marshals tried to come and get him. And he threatened John Kemple. John Kemple was

threatened enough that he went and filed a police report. This is not the behavior of a person who is acting in accordance with the law at all.

And he is bemoaning the fact that trailers and things have been taken from the property. Well, if he had complied with the court's orders and removed those things from the property, as he had been ordered to do, they wouldn't have been taken from him. But he didn't comply with the law.

And lastly, Mr. Bradford pointed out, Mr. Hawkins had talked about sacrifice. Well, he borrowed well over a million dollars from United States, and he--and the court file that you have taken judicial notice of will reflect this--he had not made a payment to the government since January of 1985. So this foreclosure action could not have caught him by surprise, and he had no defense to it. Yet he continue to willfully disobey the court and to intimidate folks in the community. And the United States' position is that he merits time in jail based upon his conduct. This kind of conduct cannot be condoned.

The Court: Thank you, Miss Massey.

Mr. Bradford: May I make one comment, your Honor?

The Court: Yes, Mr. Bradford.

Mr. Bradford: I am very disappointed in the government. What the government is saying now is that, Mr. Bradford, we told you we aren't seeking jail time. They never told me that if he goes to trial they're going to see jail time. What they're saying is, "Mister, if you want your day in court as the law provides for you, we want you to go to jail." I am

very repulsed by that position.

The Court: Well, the approach that the government takes, of course, reflects the fact that when a defendant admits the criminal charges, if he can dot hat within the appropriate legal definitions and so forth, that that's an acceptance of responsibility that is appropriate for them to take into account in the recommendation that they make. But when a defendant is being accused, in part, of willful disobedience of a court order, and continues to act willfully in face of convincing evidence, it maybe that some stiffer punishment is needed.

In any event, there--I think I need only say that their argument in my view is no inappropriate. Both of you make recommendations; I take them to account, but I am not bound by them. So I will proceed to make my own judgment on the matter. We will be in recess for ten minutes.

Mr. Bradford: Thank you your Honor.

(The court recessed from 11:15 AM until 11:50 AM)

The court: Mr. Bradford, would you bring Mr. Hawkins back to the podium please? My recess took a little bit longer, partly so that I could confer with the probation officer of the court, but also because I got a telephone call form Spain, one of the Barker offspring. But I hope you know why I took that call.

I tried to figure out how to mold a sentence here that has all the appropriate elements in it, the requirements that must be met in any sentence that there be an aspect of punishment in it, that had a bite to it, so that you and others sense the fact that

this unlawful behavior cannot go unpunished; but also to take into account the nature of the violation, which, while flagrant, doesn't constitute the sort of serious crimes that often face the court and require sentencing.

The other element is deterrence, so that others who are perhaps tempted to defy the lawful orders of the court will sense that that is improper, or, if they choose to do that, they will have to pay a punishment as well for their actions. So in view of all that I made this decision:

I will impose three months of probation. And as a special condition of probation you will be--Let's back up.

I will impose three months of probation. You will be required to abide by the standard conditions of probation that the court imposes on all probationers, that you can't violate any law, federal, state, or local, during that period of time. You have to stay in touch with the probation office and basically be under their supervision.

As a special condition of probation I will impose five days of detention in a halfway house in Vanderburgh County, in basically a lockdown status, that is to say, no furloughs. So that five days will have to be served as a period imprisonment. The halfway house is less auster, less onerous than the jail, but it's still going to deprive your freedom for five days. And Vanderburgh County is probably the closest county where we have those kind of facilities available.

Then for the remainder of the period of probation, each Saturday thereafter for a total of

eight Saturdays, we will say--we won't make it a full three months, but eight Saturdays after toe period of five days of incarceration you will be required to do community service. Now that doesn't have to be on Saturday, but is supposed to be a eight hours a week. You can choose some other day if it fits your work schedule better; I don't want to interrupt that. But from eight in the morning until five in the evening you will be required to do community service someplace in and around your home county of Orange County. Perhaps the probation office can find something for you to do.

I suggested to the probation officer, but--this may not pan out, so don't hear this as an express order--that there may be volunteer work that you can do with 4-H, or you could work in the Hoosier National Forest, doing some sort of assistance there, or any other community service for that period of time during the months of probation.

So that is the sentence that I will impose in this case. And I think it represents the sort of balance that I was hoping to achieve and a way of accommodating all those factors.

Mr. Hawkins, I hope you can learn another lesson that there is in all of this, that can be taught to you form all of these circumstances. I don't need to repeat them all, but one of them is to get competent counsel, such as you finally wound up with here in the form of Mr. Bradford, who is able to explain to you and help you through all of the hurdles that present themselves when you engage in the kinds of litigation that you have been involved

in, and give you good advice, and then follow it. I do believe that you were disadvantaged by the counsel that you had to begin with, as Judge Dillin said. But that counsel doesn't account for all the problems you have had, and a lot of problems that you have had came from inside you. And that's where you need to a little work as well. So that is the judgment of the court.

Anything further today,Mr. Bradford?

Mr. Bradford; May he voluntarily report, your Honor?

The Court: Yes. In fact the probation officer needs to make the arrangements, and you will be told when you are to surrender for the five days incarceration, and also where the community service will be. So when those directives come to you, you must follow them to the letter. And you can meet with Mr. Coan, who is the probation officer you will deal with on the proceedings, and he will get you on track for that.

Mr. Bradford: Thank you, your Honor.

The Court: Mr. Bradford. Anything else, Miss Massey?

Miss Massey: No, your Honor.

The Court: That is the judgment of the court. Good luck to you, Mr. Hawkins.

(The hearing was concluded at 11:55 AM)

I certify the foregoing is a correct transcript from the record of proceedings in the above matter.

D.R. Oesterreich November 17, 1996
Official Court Reporter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
UNITED STATES OF AMERICA
JUDGMENT IN A CRIMINAL CASE
V (For offenses Committed on or after Nov 1, 1987)
Arel B. Hawkins Case Number: 4:96CR00006-001

James Bradford

Defendants Attorney
Defendant:
pleaded guilty to counts(s) 1

Count Number(s)	Section	Nature of Offense	Date Offense Concluded
1	18U.S.C. 491(3)	criminal contempt	5/6/96

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Soc. Sec. No.: 315-64-0215 7/31/96
Date of Birth: 10/19/52 Date of
imposition of judgment
Defendant's residence address:
Route 2
Paoli, IN 47454
Signature of judicial officer
Defendants mailing address:
Honorable Sarah Evans Barker, Chief Judge
P.O. Box 163 U.S.
District Court
Paoli, IN 47454 August
2, 1996

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
UNITED STATES OF AMERICA
AMENDED JUDGMENT IN A CRIMINAL CASE
V (For offenses Committed on or after Nov 1, 1987)
Arel B. Hawkins Case Number: 4:96CR00006-001
Dated of original judgment 7/31/96 James Bradford

Defendants Attorney
Reason for Amendment:
Correction of Sentence for Clerical Mistake(Fed. R. Crim.P36)
The Defendant:
was found guilty on count(s) *1
after a plea of not guilty.

Count Number(s)	Section	Nature of Offense	Date Offense Concluded
1	18U.S.C. 491(3)	criminal contempt	5/6/96

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Signature of judicial officer
Defendants mailing address:
Honorable Sarah Evans Barker, Chief Judge
P.O. Box 163 U.S.
District Court
Paoli, IN 47454 August
16, 1996

APPENDIX F

F1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v. Cause
No. Na 96-6-CR-01
AREL B HAWKINS
Defendant.

APPELLEE-UNITED STATES OF AMERICA'S
MOTION TO MODIFY OR SUPPLEMENT
THE RECORD ON APPEAL

The Appellee, United States of America, hereby moves to modify or supplement the record on appeal in this case pursuant to F.R.A.P. Rule 10(e) and Circuit rule 10(b). The reason for the motion is set forth below.

Federal Rule of Appellate Procedure 10(c) provides in pertinent part:

"If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation of the district court either before or after the record is transmitted to the court of appeals, . . . may direct the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted."

Circuit Rule 10(b) states in pertinent part:

"A motion to correct or modify the record pursuant to Rule 10(e), Fed. R. App. P., . . . shall be presented first to the district court. That court's order ruling on the motion will be transmitted to this court as a part of the record."

This case is currently on appeal to the Seventh Circuit Court of Appeals. The Appellant, Arel B. Hawkins' initial pro se brief was filed with the court of appeals on or about May 9, 1997. In that brief, Hawkins alleges that his conviction for criminal contempt violates the double jeopardy clause because Hawkins had been held in custody as a result of a finding of contempt made by the Honorable S.Hugh Dillin. Hawkins does not, however, make it clear in his Brief that Judge Dillin found him to be in civil contempt. During the criminal trial in this matter, the Honorable Chief Judge Sarah Evans Barker took judicial notice of the civil foreclosure file of the United States v. Arel B. Hawkins, et al., Cause No. NA 94-88-C.

Accordingly, the government wishes to file in this appeal the following documents attached hereto: Entry on Proceedings for April 29, 1996; Notice and Order to Contemnor, Arel B. Hawkins; and Entry and Order for May 9, 1996. These court entries and notice to contemnor pertain to the civil contempt finding made by Judge Dillin in Hawkins' civil foreclosure matter, Cause No. NA 94-88-C, and will enable the government to respond to Hawkins' allegations concerning double jeopardy. These civil entries and notice are necessary so that the government can adequately defend the appeal in

this case.

Wherefore, the United States prays that this court grant the United States' motion to supplement the record on appeal and that it further direct that the entries and notice attached hereto be made a part of the record and that the district court order the district court clerk to forward the documents to the court of appeals along with this motion and the district court's ruling on the motion.

Respectfully submitted

Judith A. Stewart

United States Attorney

By:

Marsha C. Massey

Assistant United States Attorney

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604
JUDGMENT - WITHOUT ORAL ARGUMENT

Date: August 18, 1997
Before: Honorable Richard A. Posner, Chief Judge
Honorable Frank H. Easterbrook, Circuit Judge
Honorable Daniel A. Manion, Circuit Judge
No. 96-3071
UNITED STATES OF AMERICA,
Plaintiff - Appellee
v.
AREL B. HAWKINS,
Defendant - Appellant

Appeal from the United States District Court for the Southern District of Indiana, New Albany Division
No. 96 CR 6, Sarah Evans Barker, Chief Judge

The judgment of the district Court is Affirmed, in accordance with the decision of this court entered on this date.
(1060-110393)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604
Submitted August 7, 1997*
August 18, 1997

Before
Hon. Richard A. Posner, Chief Judge
Hon. Frank H. Easterbrook, Circuit Judge
Hon. Daniel A. Manion, Circuit Judge

United States of America, Plaintiff-Appellee v. Arel B. Hawkins Defendant-Appellant

Appeal from the United States District Court for the Southern District of Indiana, New Albany Division.

No. 96-3071

4:96CR00006-001

Sarah Evans Barker, Chief Judge.

Order

The Farmers Home Administration foreclosed on its mortgage loan to Arel Hawkins,

who owed more than $1.1 million. After the farm was sold at auction to satisfy part of the debt, the district court ordered Hawkins to vacate the property sot hat the new owner could take possession. Hawkins did not leave and had to be removed. The sale occurred in January 1996; the date for departure was in February 1996; but Hawkins was still there in April. A judge held Hawkins in civil contempt but allowed him seven days to purge the contempt by departing the farm. When Hawkins did not comply, he was arrested on a bench warrant and prosecuted for criminal contempt of court. Hawkins was convicted in a bench trial. His sentence--five days' imprisonment, followed by three months' probation during which he was to perform eight days of community service--has been served, and the United States contends that his appeal is moot.

It is not moot. Whether or not the expiration of the custodial sentence would make the case moot under the standard for direct appeals in criminal cases, compare Sibron v. New York, 392 U.S. 40, 51-58 91968, with St. Pierre v. United States, 319 U.S. 41 (1943), this conviction has a financial consequence: a special assessment of $10. That is a trifle, to be sure, but the same trifle has wiped out the concurrent-sentence doctrine. Ray v. United States, 481 U.S. 736 (1987). No case with monetary stakes can become moot, because the money can change hands a second time to undo the original judgment.

Hawkin's principal argument on the merits

is that the ciriminal prosecution violates the double jeopardy clause of the fifth amendment, in light of the civil contempt adjudication. He does not cite any authority for this proposition, which is inconsistent with the principle that a civil sanction does not preclude a criminal prosecution. See United States v. Ursery, 116 S. Ct. 2135 (1996). None of his other arguments requires comment. The tenor of his presentation--which includes statements such as "I would like to know where the court has jurisdiction to issue writs on private property"--suggests more an unwillingness to acknowledge the power of the district court (and the authority of the laws of the United States) than a cognizable legal argument.

Affirmed

*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary, and the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a); Cir. R. 34(f).

APPENDIX G

Conclusion

In conclusion of this petition I believe as a property owner I am complied as a citizen of this great land to comply to the very letter of law. And by doing this I can follow the pursuit of happiness as used in constitutional law. This right includes personal freedom of contract exemption from oppression or insidious discrimination, the right to follow ones individual preference in the choice of an occupation and the application of his energies, liberty of conscience, and the right to enjoy the domestic relation and the privileges of the family and the home. Butcher Union ect Co vs Crescent City Live Stock, etc. co. 4 s. Ct 652,111 us 746 28 led 585.

I believe that my civil rights have been violated by the United States District Court and the United States Justice Department and FHA.

No._____

_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

AREL B. HAWKINS _ PETITIONER
VS
UNITED STATES OF AMERICA
RESPONDENT

PROOF OF SERVICE

I, Arel B. Hawkins, do swear or declare that on this date, March 31, 1998, as required by Supreme Court Rule 29, I have served the enclosed Appendix to MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid. The names and address of those served are as follows:
Solicitor General of the United State
Room 5614 Department of Justice
950 Pennsylvania avenue NW
Washington, DC 20530-0001

I declare under penalty of perjury
that the foregoing is true and correct.

Executed on 3/31/98

_____

Signature